A

TREATISE

ON THE

STUDY OF THE LAW:

CONTAINING,

DIRECTIONS TO STUDENTS,

WRITTEN BY THOSE CELEBRATED

LAWYERS, ORATORS, AND STATESMEN,

THE

LORDS MANSFIELD, ASHBURTON, AND THURLOW,

IN A

SERIES OF LETTERS

TO

THEIR RESPECTIVE YOUNG FRIENDS;

WITH

NOTES, AND ADDITIONS,

BY THE EDITOR.

Qui ſtudet optatam curſû contingere metam,
Multa tulit, fecitque puer, ſudavit & alſit.

HOR. ART. POET.

LONDON:
Printed for HARRISON, CLUSE, and Co.
N° 78, Fleet Street.
1797.

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ADVERTISEMENT.

A Judicious ſkill, in the municipal laws of any country, amply recompences, ſays a great modern law writer, the labour of acquiring it, by it's uſefulneſs and dignity. As this knowledge aſcertains the civil rights of all orders of men in the commonwealth, it muſt be allowed to maintain a very pre-eminent rank among the various attainments of human induſtry: it is, moreover, unqueſtionable that no profeſſion offers rewards ſo certain, or ſo ample, to thoſe who excel; it leads to the temple of fame, as well as wealth.

It is admitted, however, that of all the liberal profeſſions, there is not any ſo difficult to ſtudy as *the law*. Gentlemen, who have received the benefit of the moſt liberal education, are impeded in their reſearches, and often, at laſt, are found to give up the profeſſion, for want of an inſtructor; and, what

is worſe, are called to the bar, and fail entirely in practice; whereas, the ſame men, *with an able tutor*, would probably have had all the ſucceſs in it, that leads to the higheſt honours and emoluments. The neceſſity of proper methods being pointed out, and of aſſiſtance being given, to the youth intended for this profeſſion, is obvious. *This* was always allowed, and for that purpoſe were the inns of court originally founded; and it muſt be owned that, *in antient times*, they in a great meaſure anſwered the end: their exerciſes, *in thoſe days*, were not mere matters of form, but real teſts of the ſtudent's proficiency. They did not then, as now, *eat* their way to the bar; and other certificates were required, beſides thoſe of having regularly and decorouſly ſwallowed their mutton *. Readers laid down, in their lectures, the

* From a hint lately thrown out in the court of king's bench, by the attorney-general, concerning the neceſſity there is for the benchers to be ſatisfied, that ſtudents, applying to be called to the bar, have received a liberal education, we ſhould not wonder, if the

the principles of particular parts of the law, explained the difficulties, and reconciled ſeeming

the old idea ſhould be renewed, "that none ſhould be called, who had not taken a degree at one of our univerſities;" a bad criterion, however, by which to judge of the ſize and character of a man's underſtanding: for, though we chuſe to ſay nothing in derogation of theſe learned ſeminaries, we may yet be allowed to obſerve, it is at leaſt poſſible, that a man may have ſome ſenſe, without having been at either; probably, enough to be a good lawyer. It is alſo within the ſcope of poſſibility, that a perſon may have been many years at a univerſity, and be little better than a dunce; for, as Fielding ſays, it is as poſſible for a man, who has never been at ſchool, to know ſomething, as for a man who has, to know nothing. The queſtion ſhould not be, *where* a man was educated, but *how*.

There was a time, when no one could be admitted, even as an attorney, without ſatisfying ſome one of the learned judges, that he poſſeſſed competent knowledge; but the way in which it has been lately judged expedient to ſuperſede the neceſſity of that laborious enquiry, is to call on each individual to ſhew his fitneſs for the ſtation he propoſes to fill, by paying the revenue 100l. and the mode in which gentlemen come to the bar, is to *keep*, as it is called, a certain number of terms, at one of the inns of court; *i. e.* to dine there a given number of days in each term; *thus*, a gentleman becomes learned

ſeeming contradictions; removed the obſtructions, and ſmoothed the ruggedneſs, which are ſo apt to diſcourage beginners, and which all beginners muſt meet, in this untrodden path, without a guide.

In all other ſciences and profeſſions, there are able and experienced tutors, to direct the pupils in the purſuit of ſuch ſtudies as are moſt ſuitable to the ſphere of action for which they are deſigned; in this profeſſion, of all others the moſt difficult of acceſs, they are left entirely without a preceptor.

learned by profeſſion, in conſequence of having eat a certain quantity of mutton. There can be no good objection to the attorney-general's idea, if he means, only, that a rigid examination ſhall take place into the moral character, and mental capacity, of every ſtudent who ſhall make application to be called to the bar; but he ought to avoid additional duties, by way of ſtamp, or otherwiſe. Making the poſſeſſion of wealth, evidence of ſenſe and virtue, is a policy that will deſtroy both. Wealth ſhould never be the ſtandard of any excellence, becauſe that never fails to chill the ardour of the moſt vivid genius; a want of due encouragement to which, from age to age, has occaſioned more loſſes to mankind than algebra can calculate.

In

In ſome degree to obviate this evil, and to point out a readier way to the attainment of legal knowledge, the following little treatiſe is ſent to the preſs: from a well grounded perſuaſion, that no inſtructions can poſſibly come with greater force, in any profeſſion, than from the profeſſors themſelves, who have ſo pre-eminently ſucceeded in it; and who muſt, conſequently, from their knowledge and experience, be beſt qualified to communicate the neceſſary aſſiſtance.

The names of *Mansfield*, *Aſhburton*, and *Thurlow*, will ſtand at the head of engliſh lawyers, as long as the law remains a profeſſion in this country; and, certainly, inſtructions from ſuch men, carry with them a degree of weight, that can receive no advantage from eulogium: it remains, therefore, only to remark, that they are here given in a collected ſtate, from the periodical publication*, in which they were detail-

* See note, page 1.

ed;

ed; and that notes, and additions, are offered by the editor, which, he flatters himself, will not be without their use, together with copious extracts from all the best writers upon the same subject.

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On

A TREATISE

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ON THE

STUDY OF THE LAW.

LETTER THE FIRST *.

Directions for the Study of ANTIENT *and* MODERN HISTORY, *preparatory to the Study of the* LAW, *with a Courſe of Legal Reading, recommended by the late Earl* MANSFIELD.

ANTIENT HISTORY.

WITH A SHORT PLAN FOR READING IT.

BY the ſhort plan I am going to propoſe to you, as a courſe of real ſtudy for about four months—with aſſiſtance—allowing for interruptions and avocations, I mean, in the eaſieſt

* Theſe letters appeared in the European Magazine for *March* 1791; and *February*, *March*, *April*, and *May*, 1792. The following letter introduced them.

eaſieſt and moſt delightful manner, to introduce you to a ſlight acquaintance with ſome of the moſt ſhining parts of antient hiſtory, policy, and eloquence; which, when once fixed in your mind and memory, will be ſerviceable to you as long as you live, and help to give, or at leaſt improve in you, the two great accompliſhments which, your friend Horace ſays, your nurſe wiſhed you to attain, "*ſapere & fari.*"

In the wide field of antient hiſtory, I have ſkipped over the rugged places, becauſe I mean to lead you on carpet ground; I have

To the EDITOR of the EUROPEAN MAGAZINE,

SIR,

I met the other day with a copy in manuſcript of ſome directions for the ſtudy of ancient and modern hiſtory, written by a venerable earl to a noble duke many years ago. They abound ſo much with that ſagacity and perſpicuity which have ever, on all occaſions, diſtinguiſhed the mind of the eloquent and learned writer of them, that I think they cannot fail of proving an acceptable preſent to moſt of your readers. I ſhould premiſe, that *L.* always means the tutor.

CURIOSUS.

P. S. I add, a courſe of ſtudy in law, recommended by the ſame venerable earl, many years ago, to a young and noble relation of his.

paſſed

paſſed over the unprofitable, becauſe I would not give you the trouble of one ſtep which does not go directly to uſeful knowledge.

My plan means to carry you but to ſome of the moſt profitable parts, becauſe I am afraid of fatiguing you with a long journey at firſt. I do not propoſe to you, to read any hiſtory at large; becauſe, for the preſent, I want to draw you on the ſhorteſt and neareſt road. I chuſe for your guide, as far as I can, Sir Walter Raleigh—who was a wit, a ſtateſman, a courtier, and a ſcholar—to tinge you betimes with the ideas natural to ſuch a character; for a river does not more certainly take it's colour from the different ſoils through which it runs, than the matter does from the caſt of mind, profeſſion, and manners, of him who treats it.

Without plaguing you with greek *, I

* It muſt not be concluded from hence, that a knowledge of greek is unneceſſary; it is, on the contrary, an indiſpenſable requiſite in the accompliſhment of the ſcholar and the gentleman. The ſtudent ſhould occaſionally declaim with Demoſthenes and Æſchines; he ſhould form his ideas of the true ſublime from Longinus, and of the ſtoic philoſophy from Epictetus.

give you, from Demoſthenes, a ſpecimen of that true, manly eloquence, fit for a ſenator, magiſtrate, and ſtateſman, in public aſſemblies: which conſiſts of ſtrong ſenſe methodically digeſted, and plainly expreſſed; not in laboured periods, antitheſes, flowers, &c. with which all falſe eloquence, greek, roman, and modern, abounds, and which, from the beginning, has generally been taught as, and miſtaken for, the true. I have a view to your keeping up and improving your knowledge of latin; for the reſt, I conſider only your attaining the perfection of your own language, and laying in materials of eternal ſenſe for thought and action. This plan will be a trial, whether you have genius and reſolution enough to perſevere in a courſe of ſtudy for four months. An interruption of any length between this and another courſe, there is no objection to; but if you break the thread of this, the whole utility will be loſt. An eaſier, cannot be ſuggeſted: the ſubject is intereſting; your helps are great—

"*Victor Olympiacæ retulit qui præmia palmæ.*"

You

You know the reſt, and feel the application.

My plan is as follows—

Read, *Du choix de la conduite des etudes, par l'abbé Fleury, ſ.* 26. *hiſtoire*; *ſ.* 31. *rhetorique.*

Read, and tranſlate into your book, *Tully de oratore, lib.* 2. *ſ.* 51. "*Age verè inquit Antonius, &c.*" to *ſ.* 63. "*vitâ atque naturâ* *."

Let *L.* be maſter beforehand of the apt conſtruction of this and every other book that I deſire to be read and tranſlated.

Tully de legibus, b. 1. *ſ.* 2. beginning "*Poſtulatur à te,*" to *ſ.* 2. "*curâ vacare et negotio.*"

Tranſlate *Tully de offic.* "*Sed cum plerique arbitrantur,*" *lib.* 1. 105. to "*turpitudinique anteponenda.*"

* The mellifluent periods of Cicero demand the ſtudent's firſt attention. His *de oratore*, his *orations*, ſhould be, as it were, at the tip of the tongue; and his letters, particularly thoſe to Atticus, are on no account to be paſſed over. The ſtudent ſhould tranſlate and retranſlate them: write him as well as read him. There is an amazing power of imitation acquired by writing thoſe paſſages which moſt ſtrike our imagination.

Let

Let *L.* give you a general account of theſe books of Tully.

In the hiſtory of the world, four empires have ſucceſſively riſen, domineered, and fallen; and have given way to a fifth ſyſtem of policy and power, which continues to this day: 1ſt, Aſſyrian; 2d, Perſian; 3d, Grecian; 4th, Roman; 5th, Goths and Vandals; who, upon the deſtruction of the roman empire, overſpread our world. The four firſt, are the ſubject of this plan: the fifth, I reſerve for another *.

Let *L.* explain to you, in a few words, the duration and extent of theſe empires;

* The following paſſage from Strabo is here applicable, and well worth tranſcribing:

Edit. Caſaub. Lib. I. p. 18.—

If I may ſo expreſs myſelf, proſe compoſition, where the diction is ſtudied, is an imitation of poetry: for poetic ornaments appeared firſt in the world, and met with approbation; in imitation of which, writers in ſucceeding times were induced to drop the metre in their compoſitions, but at the ſame time to preſerve other poetic ornaments, and at length thoſe who came laſt, by continually ſubtracting ſomething, brought it down to what we now ſee it, from it's original elevation.

there

there is a French chart which explains it mechanically *.

Let *L.* tell you, who Sir Walter Raleigh was; his ſtory, fate, and the circumſtances under which he wrote his hiſtory. Then read, for the origin of ſociety, *Sir W. R. b.* 1. *c.* 9 *ſ.* 1, 2, 3, 4.

Read and tranſlate into your book—which I ſuppoſe you to uſe for your own remarks in this courſe—*Tully de Offic. lib.* 2. *c.* 12. from "*Mihi quidem,*" to "*arbitrantur.*"

I paſs over all the Aſſyrian empire, applying, "*Vixére fortes, ante Agamemnona, &c.*" [*b.* 3. *c.* 2. *ſ.* 3. †]

Let *L.* explain to you who Xenophon was; his ſtory; time; reputation as a philoſopher, hiſtorian, general, and author, and his fa-

* See Prieſtley's hiſtorical chart, and his biographical chart ſhould be uſed at the ſame time.

† The references in this letter [between crotchets] are to Sir Walter Raleigh's hiſtory of the world, firſt printed in 1614, with his life by Oldys, 1736, 2 vols. folio. His trial, 17 Nov. 1603. 1 Jac. 1. Executed October 29, 1618. Ætat. 66. Popham, chief juſtice, with other commiſſioners. Sir Edward Coke, attorney general.

mous

mous retreat. [*b.* 3. *c.* 3. *ſ.* 3, 4, 5, 6. *c.* 5. *ſ.* 6, 7, *c.* 6. throughout.]

You now come to events and characters celebrated by poets, hiſtorians, orators, &c. which it is a ſhame not to know. [*c.* 7. *every ſection, except the* 7*th*, *c.* 8. *and c.* 9. throughout.]

Let *L.* inform you how the Peloponneſian war is memorable by having it's hiſtory wrote by Thucydides. Let him turn you to the *engliſh tranſlation of Thucydides*; which, though very ſtiff and very bad, gives the ſenſe, you may vary it into better words. Let him ſhew you the *ſpeeches*, ſuch as *the funeral oration made by Pericles*; likewiſe ſome of the moſt *ſhining paſſages*, which—mending the engliſh—tranſcribe into your book. [*b.* 3. *c.* 12. throughout.]

Read carefully *the engliſh tranſlation of Monſ. Tourreil's hiſtorical preface to Demoſthenes, printed at London the beginning of this century.* [*b.* 4. *c.* 1. *ſ.* 2, to 8, incluſive.]

Read over and over, *ſuch of the ſpeeches of Demoſthenes as are tranſlated into engliſh by earl Stanhope, lord Lanſdown, &c. printed*

at

the beginning of this century, with Tourreil's hiſtorical preface before mentioned.

Write obſervations into your book; get places that ſtrike your imagination by heart. Reflect upon the nature of the greek ſtates; ſomething like thoſe of the netherlands, ſwiſs, &c. Let *L.* make himſelf maſter of *Tourreil's notes*, &c. &c. ſo as to be able off-hand to explain terms, alluſions, and facts, referred to. [*b.* 4. *c.* 2. throughout.]

Here

* The laws of England are eſteemed by Forteſcue, chief juſtice to Henry Vth. to be of earlier antiquity than thoſe of Rome or Venice, and to have remained unchanged through all the revolutions of empire to which this country has been ſubjected. *Jenk.* 97. 117.

The ſimilarity of our idiom to the greek, as well as other inducements, have perſuaded ſome men to believe, that the inhabitants of the weſtern extremity of our iſland were civilized and acquainted with commerce in a very remote age; yet, if we conſider the barbarous ſtate of this country, when it was firſt viſited with an armed force by the Romans, and the length of time they exerciſed dominion here, we muſt ſuppoſe, very few, if any, of our general cuſtoms, are of Britiſh extraction antecedent to that invaſion. The roman ju-

Here take for granted, that Alexander's captains divided the ſucceſſion; fought about the diviſion; and, in the courſe of generations, deſtroyed ſeveral ſtates and kingdoms, which were all, at laſt, ſwallowed up by the romans. *Roman hiſtory*, [*b.* 2 *c.* 24. throughout; *b.* 4. *c.* 6, 7. *ſ.* 1, 2, 3.; *b.* 5. *c.* 1. *ſ.* 2. 3. 8.] Re-

riſprudence flouriſhed in this iſland for the ſpace of above 360 years, from the reign of Claudius to that of Honorius, during which time ſome of the moſt eminent of the lawyers, whoſe opinions and deciſions are collected in the body of the imperial civil law, as particularly *Paulus Ulpian* and *Papinian*, ſat in judgment here, and diſtributed juſtice to the inhabitants.

The refined ſyſtem of thoſe who were philoſophers as well as juriſts, was afterwards ſhattered and overthrown by the ſucceſsful invaſion of the Saxons, and the conſequent prevalence of their cuſtoms, which appear in the ſucceeding ages to have ſtrongly engaged the national partiality in their favour, and are conſidered as ſtill one great baſis of our laws.

The ſaxon inſtitutes were neceſſarily interſperſed with ſome few *daniſh* uſages; little of our legal polity, however, is derived from that ſource.

But the moſt ſudden innovation ever made in the laws of this country, was that which was accompliſhed under our firſt norman monarch, when the feudal ſyſtem was introduced.

collect

collect the ſtory of Regulus celebrated by claſſic writers, the odes of Horace, &c. Tully de offic. *B. P.* 134. *Tranſlate S.* or $\frac{99}{9}\ \frac{100}{10}\ \frac{101}{11}$, [*c.* 2. *ſ.* 8. *c.* throughout.]

Take for granted, that after the ſecond punic war the romans ſought or found occaſions by which they conquered the whole grecian empire. They learned letters and arts from Greece, grew polite and ſcholars.

"*Græcia capta---ferum victorem cepit, &c.*"

"*Serus enim Graiis admovit acumine chartis.*"

"*Et poſt punica bella quietus, &c.*"

[C. 6. ſ. 12.]

End Sir W. Raleigh.

Vertot's roman revolution, b. 13, 11, 12, 13, 14, throughout.

Reflect on the nature and conſtitution of the roman republic; whether it was not founded for one town, or at moſt a little republic not bigger than that of Florence, but inconſiſtent with that of a large ſtate; whether it did not continue ſo long by accident, by perſonal characters in early time, and by foreign occupations, more than by their

conſtitution, which turned at laſt into anarchy.

Read *bellum jugurthinum*, by Salluſt, beginning after the introduction with "*bellum ſcripturus ſum*"—it is not one hundred ſhort pages;—Salluſt's character of Cataline, Cæſar, and Cato; the ſpeeches by Cæſar and Cato; and Cicero's four cataline orations. Study theſe, and write obſervations in your book.

De la grandeur et de la decadence des romains; *c.* 2. [or, *c.* 11.] Cicero's fourteen ſpeeches againſt Mark Antony; which, in imitation of Demoſthenes, are called the philippics. Write obſervations, &c. into your book. The ſecond, which is the fineſt, and which coſt him his life, is the only ſpeech of length.

When you have finiſhed the above courſe, in the manner propoſed, go over the whole a ſecond time; which, if you make yourſelf maſter of it the firſt time, need not coſt you many days.

The next thing in order is, that you ſhould have ſome notion of the hiſtory of the roman empire,

empire, from Julius Cæſar to the end of the fifth century.

But I am at a loſs to direct you how to get an intelligible idea in ſo ſhort a time as my plan would at preſent allow for that ſubject.

The lives of the twelve cæſars by Suetonius is well written; but the advantages to you from reading of it would not be equal to the time it muſt take. That part which Tacitus has written is admirable, and may one day well deſerve your attention; but you will underſtand him better hereafter, and I am in haſte to carry you through a general plan of modern hiſtory.

When you have once laid your foundation in general knowledge, you may afterwards follow your genius and inclination in applying to particular parts and particular authors. I have, upon this occaſion, read Eutropius; but, I am afraid, he is too conciſe to afford you any idea. He gives little more than a muſter-roll of the names of the emperors. Reading in that manner, I doubt not, will, to the memory, be like the way of a

ſhip

ſhip in the ſea. The beſt propoſal I can make is, that *L.* ſhould take *c.* 12. to 18. incluſive, *de la grandeur des romains, et de leur decadence*; adding the chronology, and throwing upon paper enlargements in particular parts, eſpecially the grand epochas. As, for inſtance, let him throw upon paper ſtrokes of the character of Tiberius, and ſome remarkable parts of his reign, which he may eaſily take from Tacitus. The ſame as to Nero, &c. &c. Let him dwell a little at large upon Trajan, M. Antoninus, the five firſt excellent princes who ſucceeded the twelve cæſars, the inveſting more than one with the imperial authority at once, the removing to Conſtantinople, the code of laws by Juſtinian *, military check by Beliſarius, code

* See what is ſaid upon the ſtudy of the civil law, in a future note.

The following quotations will ſhew the neceſſity of it's forming a *part* of the ſtudies of the common lawyer.

Caſes where the civil law was followed—

1 Peere Will.	-	10.
Id.	-	267.
Id.	-	304, 405-6, 441, 542.

2. Ts.

code of laws by Diocleſian, the diviſion of the empire into two, and the general idea and conſequences of that diviſion. Let him point out famous writers in each reign. This will give ſome trouble, not a great deal. After this, read biſhop Meaux's diſcourſe on univerſal hiſtory, tit. de l'empire romain, to the end. This will give you a ſmall map, ſufficient at preſent. Reflect on roman imperial government; military and tyrannical, like the turkiſh and ruſſian.

2. Ts. Atkins,	115.
3. ———	364.
J. C. Wilſon,	135—Comyns, 738.
1 Vezey,	86, &c. &c. &c.

Caſes where the common and civil law expreſsly differ.

2 Peere Will.	142-3, 348, 442, 528, 530, 667, 682.
2 Hawk. P. C.	13. § 10.
1 Strange,	80.
2 ———	1255.
2 Vezey,	517.

The law of England borrows the rules of the civil law in the conſtruction of *wills* and *truſts*.

I pro-

I propoſe, for my ſecond plan, the fifth ſyſtem of policy and power, to lead you through the moſt uſeful and intereſting parts of modern hiſtory and policy: but the ſketching ſuch a plan will give me a good deal of trouble: ſhort explanations not to be got from books; obſervations, by way of key, to tranſactions of ages; hints from whence to judge of characters; contraſts, by compariſon, of men, times, works, and ſyſtems, &c. may be ſerviceable, and muſt require them. You will therefore excuſe my not thinking of it until I ſee, by this trial, whether you have genius and reſolution enough to go through with what is neceſſary to raiſe you above the common level.

"*Victorque virûm volitare per ora.*"

LETTER

LETTER THE SECOND.

MODERN HISTORY.

WITH A SHORT PLAN OF READING IT.

THE beſt and moſt profitable manner of ſtudying modern hiſtory appears to me to be this: firſt, to take a ſuccinct view of the whole, and get a general idea of the ſeveral ſtates of Europe, with their riſe, progreſs, principal reſolutions, connections, and intereſts: and, when you have once got this general knowledge, then to deſcend to particulars, and ſtudy the periods which moſt deſerve cloſer examination*. The beſt way of getting

* The greateſt innovation that was ever made in the laws of this country, was by the introduction of the feudal ſyſtem under William I. By what method this change was effected, is beſt ſeen in ſir Martin Wright's introduction to the law of tenures.

The feudal law was firſt authentically reduced into writing by command of the emperor Frederick. That prince cauſed Obertus and Gerardus, in 1152, to compile

getting this general knowledge, is by reading the hiſtory of one or two of the principal ſtates of Europe, and taking that of the leſſer ſtates occaſionally as you go along, ſo far as it happens to be connected with the hiſtory of thoſe leading powers, which you will naturally make your principal objects, and conſider the others only as acceſſaries.

Though the hiſtory of England is certainly that which you will ſtudy moſt, yet I think

out of the various cuſtoms prevailing in different regions and cities, as regular codes; which, under the title of *feudorum conſuetudines*, we now find ſubjoined to the *corpus juris civilis*. A moſt uſeful book on the ſubject of the feudal ſyſtem is, "Stuart's progreſs of manners in ſociety;" and the ſtudent ſhould read, at the ſame time, "Dr. Robertſon's introductory volume to his hiſtory of Charles V."

Great ſimilitude of features are diſcernable between many parts of our own, and the old feudal law. An Engliſh lawyer, if he would attain the true perfection of his art, has, like the painter, his Lombard and Italian School: our municipal ſyſtem, in it's progreſs, has copied the great draughts in them both.

The laws of deſcent ſtill prevailing, and the whole doctrine of tenures, now in a great meaſure aboliſhed, are all grafted on this ſtock.

you

you would do well at preſent to give the preference to that of France; therefore, the ſhort plan which I ſhall endeavour to ſketch for you, ſhall be chiefly with a view to the hiſtory of that country.

The reigns of the firſt race of french kings, are ſo little known, and ſo little worth knowing, that I think it ſcarce worth your while to read them, even in the ſhorteſt abridgement.

L. will be able to tell you, in half an hour's converſation, as much about them as ever you will want to know.

As to all thoſe diſputes about the foundation of the french monarchy, upon which volumes have been wrote; as, whether Clovis was a great prince, or a *chef d'aventuriers*; whether he owed the crown to force of arms, or the conſent of the people, or both; they may do to employ the leiſure of idle ſpeculative men, but can never deſerve the attention of a man who intends for active life, and feels the value of time.

The victories and conqueſts of Charlemagne, his great power, and immenſe extent

of Empire, are too ſtriking objects to be entirely overlooked. I think it would be proper for you to *begin with the reign of his father Pepin, the founder of the ſecond race of french kings.* For *that race, and for the third, as far as Louis XI.* it will be perhaps ſufficient to read carefully, and ſlowly—for there is no other way of reading, to advantage, a book wherein ſo much matter is crouded into ſo ſmall a compaſs—*Henault's chronological abridgement*, which is a capital book of the kind. When you meet, there, with any remarkable events, which you wiſh to know more particularly—ſuch as the battles of Creſſy, Poictiers, and Agincourt—you may turn to *Mezerai* or *Rapin:* and I would adviſe you, when you read, in *Henault*, the reign of any king, to read his character in *Mezerai*; for, though nothing is leſs to be depended upon than ſuch ideal characters, yet they are at leaſt helps to the memory, and leave upon the mind pretty much the ſame kind of impreſſion that is made by ſeeing the pictures of eminent men. When we have examined any ſuch picture, no matter whether like or not,

not, we grow, as it were, better acquainted with the original, and form to ourſelves an idea of his perſon, which helps to fix in our memory whatever we hear or read about him.

This ſuperficial knowledge of the hiſtory of France, is as much as you will want till you come to the reign of Louis the XIth; when that hiſtory becomes really intereſting, and conſequently muſt be read more at large, and with much greater attention. I ſhould be tempted to doubt, whether the common method, of abridging hiſtory as you read it, has all the advantage that is generally imagined: if you enter into a detail, the work is endleſs; if you content yourſelf with ſhort, dry epitomes, they are, if I may judge by my own experience, of little or no uſe, ſcarce any help to the memory, and forgot almoſt as ſoon as made*.

* By the courſe of reading here given by his lordſhip, it is underſtood that the ſtudent ſhould have a critical knowledge of the french language.

A great part of the black letter law of paſt centuries, is written in old french. The knowledge of french ſhould be *critical*.

What

What I ſhould recommend as a much more uſeful exerciſe is, to ſet down, in a few words, the moſt ſtriking and intereſting events, with ſuch other obſervations upon them as occurred to you at the time.

To explain what I mean, by an example—I would obſerve, in the reign of Louis XI. the advantages with which he came to the crown; the manner in which he improved thoſe advantages, by fomenting diviſions in England, by corrupting the engliſh government, and even the king himſelf; the foundations he laid for the future greatneſs of France, by adding to his dominions ſuch rich and powerful provinces, and by lowering and humbling the nobles—who before his time were ſo many petty tyrants—and by that means giving a ſolidity and conſiſtency to the french government which it never had before. I would likewiſe remark, the inconſiſtency of his character; the ſtrange blunders he committed—ſuch as putting himſelf into the hands of the duke of Burgundy, and that, too, at the very time he was

betraying

betraying him; miſſing the opportunity of marrying his ſon to the ducheſs of Burgundy; and adding to France, without the ſmalleſt expence or bloodſhed, thoſe provinces which, by this neglect, fell into the hands of her rival, and have ever ſince been the object of her ambition, and the cauſe of ſo many ruinous wars. Theſe are far from being all the memorable events in this reign; many things I have forgot; ſome, that occur to me, I purpoſely paſs over, that I may leave them for your obſervation: what I have ſaid, is ſufficient to explain my idea, and give you a hint, which you will eaſily improve.

THE memoirs of *Philip de Comines*, who was Louis the XIth's cotemporary and favourite, deſerve to be read with attention, ſome time or other; but, I think, you ſhould not meddle with them now: the ſtile and language is ſo different from the preſent, that it would only puzzle and confound: beſides, you will find all the material facts in *Duclos's hiſtory of Louis the XIth*, which is certainly the work of a man of parts, and is

wrote

wrote with purity, though there is a ſtiffneſs and affectation in the ſtyle.

As I imagine you will neither have leiſure nor inclination to drudge through the early part of modern hiſtory again; I think you would do well to ſtop a moment, in order to run over in your mind the moſt remarkable events in that period, and fix them in your memory once for all.

What theſe events are, you are now better able to judge for yourſelf, than I am to tell you; ſuch of them as relate more immediately to the hiſtory of England—and many ſuch there are—you need not ſo much attend to at preſent, as you will certainly, ſome time or other, make them the ſubject of a particular enquiry.

But there are two great objects in which the general hiſtory of Europe is concerned; which, from their importance and ſingularity, muſt have ſtruck you, and will well deſerve a more particular examination, as they certainly make the moſt intereſting part of the hiſtory you have juſt been reading; the two objects I mean, are the riſe and progreſs of the

the papal power, and the cruſades, or holy wars*.

THE

* Eccleſiaſtical conſtitutions began firſt to aſſume the form of laws, in the time of Conſtantine, who added the energy of public authority, to the ſynods at which they were enacted. After him Juſtinian gave a ſolemn ratification, by the words *ſancimus vicem legum obtinere* to the ordinances made in four councils, held at Nice, Conſtantinople, Epheſus, and Chalcedon. Ayliffe diſtinguiſhes the more antient common law, thus eſtabliſhed in councils of the church, from the *jus pontificium*, founded on papal authorities; which, however, became in proceſs of time ſo far incorporated with the other, into one general ſyſtem, that the foreign canon law appears now to conſiſt almoſt wholly of decrees and decretal epiſtles of popes, though many of theſe were probably founded on earlier and better authorities. Various collections of canon law were in different ages ſent out into the world under the authorities of ſucceſſive popes. The code compiled by the direction of Gregory XIII. is ſpoken of by ſir William Blackſtone, as containing the whole body of roman common law; but to this, it ſeems, may be added, as text alſo of received validity among canoniſts, the inſtitutes framed by authority of Paul the IVth, and the ſeven books of decretals.

That our laws ſhould have a mixture of the canon as well as the civil law, is natural; as the popes had

THE origin and growth of the pope's temporal power, the continued ſeries of fraud and artifice on which it was built, and by which it was maintained and gradually improved, is no where, that I know of, more clearly and fully ſtated, than in *Giannoni's hiſtory of Naples*; yet that is a book which cannot enter into your preſent plan, but will deſerve to be read, ſome time or other, with the utmoſt care, as one of the moſt maſterly and inſtructive books any country ever produced. That part of lord Bolingbroke's

much longer, and in one ſenſe more abſolute dominion, here, than the emperors; and though, while Britain was under the roman government, it could not be altogether a ſtranger to the roman law, yet the ſaxon invaſion ſeems in a great meaſure to have ſwept it away. We have many points of antiquity, as well as daily practice, from the canon law. The primitive inſtitutions of our *term*, the cuſtom of not going on with terms in the afternoon, the ſingular conceit of prohibiting juries meat, drink, and candle-light, till agreed in the verdict, are all from the canon law. Many rules concerning the church, as to advowſons, patronage, rights of preſentation; others with regard to matrimony, privilege of clergy, and concerning teſtaments, are derived from the ſame ſource.

fourth

fourth eſſay, in which he treats this ſubject, contains, I think, as much as you will want to know of it at preſent, ſect. 31 to 34, and 35 to 38; and will give you a pretty general idea, though it ſhould be read with that caution, with which, whoever deſires not to be miſled, will always read the works of a man who wrote with a ſtrong bias on his mind, and had too much accuſtomed himſelf to the language of paſſion.

The holy wars are ſuch a continued ſeries of ſuperſtition and madneſs, as is not to be paralelled in hiſtory, and as cannot but appear aſtoniſhing, even to thoſe who ſee fartheſt into, and make the greateſt allowances for, the weakneſs and folly of mankind. If, during the time of this epidemical madneſs, there had been any prince wiſe and great enough to preſerve himſelf from the contagion, and to take advantage of the folly of his neighbours, he might have made ſuch conqueſts as would have enabled him to give law to the reſt of Europe; *but not one man in ten thouſand is able to riſe above the level of the age he lives in.* All the princes

in Europe caught the infection, and ſtrove only to outdo each other in all the extravagance of enthuſiaſm.

There are ſeveral particular hiſtories of the holy wars, but the ſhort ſketch in *Voltaire* is ſufficient for your preſent purpoſe.

As a taſte for letters naturally gives a curioſity to know the hiſtory of them, the riſe and progreſs of literature will of courſe be one of the favourite objects of your attention, and will well deſerve to be ſo; for there is no hiſtory more intereſting, nor more inſtructive, than that of *l'eſprit humain*.

You will have obſerved, that Charlemagne, though illiterate himſelf, endeavoured to ſpread learning in Europe, and with that view ordered the beſt arabic books to be tranſlated; but the confuſion that aroſe after his death, ſoon ended the little he had been enabled to do for the encouragement of letters, and plunged the weſtern part of Europe into the darkeſt ignorance, which laſted almoſt without interruption till the reign of Charles V. of France, whoſe reign may be reckoned the firſt dawn of letters. He was

the founder of the famous royal library at Paris; and the french reckon a continued ſeries of poets from his time to the preſent; though, till the reign of Louis XIV. there was not one that deſerved the name.

The true reſtorers of arts and literature were the Italians, particularly the Florentines, in the fourteenth century. The Greeks, who, when drove from Conſtantinople by Mahomet II. took refuge in Italy, were not, as is commonly imagined, the firſt authors of this reſtoration, though they contributed greatly towards it by teaching greek, &c. and opening to them, by that means, the trueſt and pureſt ſources of all taſte and knowledge. This you will ſee explained in *Voltaire's diſſertation upon the arts and manners of the thirteenth and fourteenth centuries, vol.* 2. *c.* 69. *of his works.* It deſerves to be read, though he has treated his ſubject ſuperficially, and not made it what it ought to have been made in ſuch hands.

You are now come to that period where modern hiſtory begins to be really intereſting, and where, conſequently, it will deſerve much

much greater attention*. This period is divided by Lord Bolingbroke into three particular periods: firſt, from about the middle of the fifteenth century to the end of the

* Hiſtory is of the greateſt uſe in ſtudying the law of nations; indeed, hardly any point can ariſe in the law of nations, but what may be proved or illuſtrated from thence.

The cuſtom, uſage, and practice, of different nations, have in many points, that are indifferent in themſelves, and not of natural obligation, been conſidered as the law of nations; and it is the buſineſs of the hiſtorian to record this practice and uſage, as far as it is connected with his proper ſubject: but when the law of nations is conſidered only as the law of nature applied to ſocieties, and ſo extend the obligation from nation to nation, which ariſe by nature between man and man, the uſe of hiſtory is leſs abſolute, and the examples it gives are to be conſidered not as proofs, but illuſtrations only. The reaſon is likewiſe plain; becauſe, in this caſe, it is the buſineſs of hiſtory to find the fault, and not the law. The eternal difference between virtue and vice, will render the quality of an action, under given circumſtances, preciſely the ſame in all ages; and, therefore, the number of examples in hiſtory to any one point, will not create law in this reſpect, as it does in the other: and this *difference* muſt ever be attended to, or hiſtory will miſlead reaſon by falſe colours.

ſixteenth;

ſixteenth; ſecond, from thence to the pyrenean treaty; the third, from thence to the preſent time.

The firſt of theſe periods, which is the only one I ſhall conſider at preſent, abounds with ſuch variety of great and aſtoniſhing objects, that no eye is ſtrong enough to take a diſtinct and accurate ſurvey of them at once. A man finds his attention ſo divided among his multiplicity of objects, that he ſcarce knows how to fix it: and theſe objects preſent themſelves under ſo many different aſpects, and may be viewed in ſo many different lights, that he is at a loſs which to chuſe. New ideas flow upon him ſo faſt, that he is hardly able to ſeparate and range them in order enough to take that general view of them, which is all you wiſh to do at preſent. To know modern hiſtory thoroughly, a man muſt make it the ſtudy of his life. Indeed, it is a ſcience of ſo vaſt an extent, that I ſhould much doubt whether a thorough knowledge is within the reach of the greateſt abilities and moſt indefatigable application.

It is of great advantage in all branches of learning, but particularly in one of ſo extenſive and intricate a nature, to have a proper clue to your ſtudies; and you cannot, I think, find a better, than that which lord Bolingbroke has given in his *ſixth letter on the ſtudy of hiſtory*. I certainly ſhall not think of meddling with a ſubject he has treated ſo ably, but ſhall only endeavour to ſupply what he has purpoſely omitted, and point out, as far as I am able, the books where you are moſt likely to find what he directs you to look for.

The hiſtory of Germany is ſo interwoven with, and makes ſo conſiderable a part of that of Europe, that it is abſolutely neceſſary to have a general idea of the conſtitution of the empire. The beſt ſhort books that I know of upon this ſubject are, a *french eſſay, called, "deſcription du government preſent du corps germanique," printed in* 1741, and *Maſcou's jus publicum*; but, perhaps, *Campbell's chapter*, read with attention, will be enough for your preſent purpoſe. If, hereafter, you wiſh to know more of the hiſtory and conſtitution of it,

it, you muſt make it the object of particular enquiry.

You will find in *Voltaire, in the chapters I have croſſed in the tables des chapitres* *, a ſuccinct account of three great events, that particularly diſtinguiſh the end of the fifteenth and beginning of the ſixteenth centuries: viz. the diſcoveries made by the portugueſe; thoſe ſtill more important ones made by Columbus; and the reformation.

* Chapters croſſed in Voltaire, and referred to in the letter,

C. 106. de Leon X. et de l'egliſe.
C. 7 & 8. de Luther, et de Zuingle.
C. 9. progreſs du lutheraniſme, en Swede, en Denmarc, et en Allemagne.
C. 12. de Geneve, et de Calvin.
C. 13. de Henry VIII. de Angleterre.
C. 14. ſuite de la religion en Angleterre.
C. 15. de la religion en Ecoſſe.
C. 16. de la religion en France ſous François I.
C. 19. des decouvertes des portugaiſe.
C. 20. de Japan.
C. 22. de Columbe, et de l'Amerique.
C. 23. de Ferdinand Cortez.
C. 24. de la conquête du Perou.
C. 25. du premier voyage autour du monde.

Theſe are ſome of thoſe great and complicated objects I alluded to above. It is ſcarce poſſible to view them in all their lights, and trace them in all their cauſes and conſequences; but all you need think of at preſent is, to fix a general idea of them in your memory, and lay them up there as an inexhauſtible fund for future reflection.

The league of Cambray is ſo intereſting an event, that you will do well to read *Dubos's famous hiſtory of it:* and, for a ſhort account of the riſe and growth of the republic of Holland, read *Voltaire, c.* 135. and the *firſt chapter of ſir W. Temple**.

Though the hiſtory of the civil wars of France is admirably wrote by *Thuanus* and *Davila*, you may, I think, at preſent, content yourſelf with *Mezerai* and *Henault*; adding to them, *Sully's memoirs*, and *Perefixe's life of Henry IV.* which two books you will read with

* The edition of Cicero, referred to in this letter, is Gronovius, 4to. The title of Henault is, "*nouvel abrege cronologique de l'hiſtoire de France*,"—beſt edition, at Paris, 1775—in three volumes, 12mo; Dubos's title is,

with infinite pleaſure, as they give the beſt idea that is any where to be found of the true character of Henry IV. which, with all it's blemiſhes, is certainly one of the moſt ſtriking and amiable characters to be met with in hiſtory.

At the ſame time that you admire Sully's fidelity, and the unſhaken ſteadineſs and reſolution with which he ſtruggled againſt, and checked, the ſcandalous abuſes that had

is, "*hiſtorie de la ligue fait a Cambray entre, &c. contre la republique de Venice,*" 2 vols. in five books; both *ſcarce* books. The chapter of Campbell, referred to in the letter, is the ninth chapter of a book, called, "the preſent ſtate of Europe," printed in one vol. 8vo. The chapters croſſed in Voltaire have the ſame titles, but not the ſame numbers, now, as they had in the edition which lord Mansfield had.

The book of Fleury, is better known by the title of *l'hiſtoire des etudes*, than by that which he has given it. In a ſpeech delivered by his lordſhip, on the diſſenters caſe, he ſays, "As to the impolicy of perſecution, any man who peruſes the admirable things which the preſident de Thou, though a papiſt, hath advanced, and which I never read without rapture, in the dedication of his hiſtory to Henry IV. of France, will meet with the fulleſt conviction.

crept into the adminiſtration of the finances, you will obſerve that the ſame auſterity of manners, and ſtiffneſs in opinion, betrayed him into falſe and narrow notions about government, and particularly about trade and manufactures*. Henry IV. had

* The law of nations is a conſtituent part of britiſh juriſprudence, and has always been moſt liberally adopted and attended to by our municipal tribunals, in matters where that rule of deciſion was proper to be reſorted to; as, queſtions reſpecting the privileges of ambaſſadors, and the property in making captures and prizes; but this branch of the law of nations, which there have been the moſt frequent occaſions of regarding, eſpecially ſince the great extenſion of commerce and intercourſe with foreign traders, is called "the law of merchants."

This ſyſtem of general received law, has been admitted, to decide controverſies touching bills of exchange, policies of inſurance, and other mercantile tranſactions; both where the ſubjects of any foreign power, and—for the ſake of uniformity—where natives of this realm *only* are intereſted in the event.

It's doctrines have of late years been wonderfully elucidated, and reduced to rational and firm principles, in a ſeries of litigation, before the late great earl of Mansfield. Under his able direction, many of theſe cauſes

had much larger views; and, in general, judged better than his miniſters, whenever his paſſions were not concerned.

cauſes have been tried by a jury of merchants in London; and ſuch queſtions, of this kind, as have come before the court of king's bench, in term time, are laid before the public by a copious and elaborate compiler, whoſe preciſion may always be relied on; and who, indeed, is known to have ſubmitted his MS. to the pernſal of lord Mansfield, and to have received his lordſhip's approbation, before a ſingle page was committed to the preſs. It need hardly be added, that this was ſir James Burrow, maſter of the crown office, whoſe celebrated reports are uſually cited by the appellation of *Burrow Mansfield.*

LETTER

LETTER THE THIRD*.

ENGLISH HISTORY.

WITH A PLAN OF READING IT.

YOU will not expect to be ſent to the authors, who are uſually called claſſical, for much information in the engliſh hiſtory. Very little is met with in the greek, and not a great deal in the latin. Cæſar, Tacitus, and Suetonius, are the only ones worth mentioning on this ſubject.

Nor will you chuſe to be referred to the monkiſh writers. Jeffrey of Monmouth, and his ſtory of Brute, are now generally given up. Some of them, indeed, as William of Malmſbury, Matthew Paris, &c. have a more authentic character; but, I ſuppoſe, any one, except a profeſſed antiquary, will be contented with them at ſecond-hand in the modern hiſtorians. Carte has made the moſt

* Written by lord Mansfield, to mr. Drummond, in 1774.

and

and beſt uſe of them, which is the greateſt merit of his book. Hume often puts their names in his margin; but, I fear, all he knew of them, was through the *media* of other writers. He has ſome miſtakes which could not have happened had he really conſulted the originals.

The firſt planting of every nation is neceſſarily obſcure, and always loſt in a pretended antiquity. It matters little to us, whether our iſland was firſt peopled by trojans, phœnicians, ſcythians, celts, or gauls, who have all their reſpective advocates; and the famous Daniel de Foe makes his *true-born engliſhman* a compoſition of all nations under heaven. If you chuſe, however, to read about this matter, *Sheringham de anglorum origine*, 8vo. 1670, is the beſt book for the purpoſe. I may juſt mention, that ſome writers would cavil at the word *iſland* juſt above, and inſiſt, that we were formerly joined to the french continent.

Little real knowledge is to be picked up from our hiſtory before the conqueſt, yet it may not be amiſs to have a general idea of

of the druidical government among the antient britons; of the invaſion of the romans under Julius Cæſar, and again in the time of Claudius; the ſtruggles for liberty under Caractacus, Boadicea, &c.; the deſertion of the iſland by the romans; the irruption of the picts and ſcots; the calling in of the ſaxons as allies—who, after a time, turned their arms againſt the natives, and conquered them, ſome few excepted, who ſecured themſelves in the mountains of Wales, whence their deſcendants affect to call themſelves *antient britons*; the eſtabliſhment of the *heptarchy*, &c.; the union under king Egbert; the invaſion and various fortunes of the danes; and, laſtly, the normans under William the conqueror *.

The

* The connection between the law of England, and the hiſtory of England, is founded on their reciprocal uſes to each other; and the uſe of hiſtory to law is evident in theſe particulars, among others.

1. In giving the proper weight to written evidence, by enabling us to conſider the times of which it bears witneſs. Written evidence is of the higheſt uſe in matters of the greateſt conſequence, whether public

or

The beſt authors for this period are, Milton, and ſir William Temple; the latter more pleaſing, but the former more accurate. Milton's

or private in their nature, on queſtions of antient right, preſcriptions, and the like: and the written exhibits produced either on the ſame ſide as parole evidence, or oppoſed to parole evidence, can never have their true force computed, without conſidering—beſides many internal circumſtances, as their nature, how preſerved, in whoſe cuſtody, &c. &c.—the ſtate of public affairs at the time they bear date, and likewiſe, in many caſes, the intervening hiſtory to the riſe of the queſtion: and this comment of hiſtory on old inſtruments and exhibits, ſerves the ſame purpoſe as croſs-examination does on the teſtimony of living witneſſes; it ſifts the truth, and ſeparates the droſs from the ore.

2. An infinite number of queſtions receive the only light they are capable of from the reflection of hiſtory. In caſes of private property, as titles, cuſtoms of places, manorial rights, &c. in theſe, and many other particulars, it is neceſſary to know the original ſtate of the matter in queſtion; what the preſent ſtate of things ſucceeded, and what has been it's progreſs. Hiſtory, too, in this caſe, will not only explain ſubſequent laws, but will ſupply the ſilence of law itſelf.

3. Hiſtory, well attended to, will furniſh uſeful obſervation and a kind of criticiſm on law-books themſelves, with regard to their doctrine; for our reaſon-

Milton's proſe works are exceeding ſtiff and pedantic, and ſir William's as remarkably eaſy and genteel; but he ſhould have attended more to the *minutiæ* of names and dates.

As to the *religion* of our anceſtors, ſomething of the druids may be learned from *Schedius de dîs germanis*, and an eſſay in Toland's poſthumous works. Chriſtianity ſeems to have been introduced, perhaps by ſome of

ing in this reſpect may ſometimes be extremely fallacious, and miſtakes may be of the worſt conſequence. We take a report book in hand; ſuppoſe the caſe we conſult is extremely clear, perhaps, and conſiſtent with itſelf; but the doctrine ſtrikes us as remarkable—we therefore look into a contemporary report: here, too, ſuppoſe we find the ſame doctrine grounded on the ſame circumſtances of the caſe, and the credit of each report is confirmed by it's conſiſtency with the other. But if the credit of the doctrine itſelf is in queſtion, we muſt look into the times; conſider who were the judges; enquire into their character, in particular from hiſtory, where hiſtory has been at all particular on the ſubject: and ſee whether it was a time when the little finger of the law was heavier than the loins of the prerogative; or whether the ſervility of the times was ſuch, that the caſe was inverted in favour of the prerogative.

the

the romans, in the firſt century. Some indeed pretend, that St. Paul himſelf came over.

The ſaxons brought their own gods with them; viz. the ſun, moon, tuiſco, woden, thor, friga, and ſeater; and, in imitation of the romans, dedicated to them reſpectively the days of the week: and hence the names which continue to our times. For this ſubject, I would recommend, Verſtegan's "reſtitution of decayed intelligence."

From the conqueſt, our annals are more clear than thoſe of any other nation in the world. This happens from the cuſtom of obligation that every *mitred* abbey was under to employ a *regiſtrary* for all extraordinary events; and their notes were uſually compared together at the end of every reign: hence the great number of monkiſh hiſtorians.

It luckily happens, that no party ſpirit has biaſſed the hiſtorians in their accounts of our old kings; and it therefore does not much ſignify what author is read. You would ſmile at my love of black letter, were I to

refer you to Hollinſhead, or Stowe; men, I aſſure you by no means deſpicable, and much ſuperior to Caxton, Fabian, Grafton, &c. nor will you chuſe to read chronicles in rhyme; as, Robert of Glouceſter, and Harding. The moſt elegant old hiſtory we have, is that by Samuel Daniel, a poet of no mean rank. Though he wrote more than half a century before Milton, his ſtile appears much more modern than his continuator. Truſſel is not ſo well ſpoken of. Daniel is very conciſe in his accounts before the conqueſt, but much fuller afterwards. He ends with Edward III. and Truſſel with Richard III. This book is reprinted in biſhop Kennet's collections; but the old editions are the beſt. The biſhop employed Oldmixon, a hero of the dunciad, in the republication; who, we are told, falſified it in many places.

If we are not content with general accounts of the ſubſequent reigns, it may not be amiſs to look at their particular writers.

Buck's hiſtory of Richard III. is remarkable, from the pains he takes to clear his character againſt the ſcandal, as he calls it, of other

other hiſtorians. Lord Bacon's florid hiſtory of Henry VIIth, comes next.

You muſt know, this king was a favourite with James the Iſt; and, as it was written to recover his favour, the author, you may ſuppoſe, has not been impartial. Lord Herbert's Henry the VIIIth, well deſerves reading: he was a free thinker, and a free writer; his information was good, and the æra particularly intereſting. The next work of importance, not quite forgetting doctor—afterwards ſir John—Hayward's Edward the VIth, is Camden's Elizabeth, a performance worthy it's author. The ſtory of Mary queen of ſcots may be more particularly learned from her countrymen Melvil, Buchanan, &c. The Stuarts have brought in a flood of hiſtories, many high-flying panegyrics, and many ſcandalous invectives. On James the Iſt, Wilſon, Sanderſon, Weldon, &c. and a late writer, one Harris, an anabaptiſt parſon.

For Charles the Iſt, appears our greateſt hiſtorian, lord Clarendon: on the other ſide, Ludlow; who, however, is particularly ſevere

vere on Cromwell. I omit Whitlock, Ruſhworth, Warwick, and a thouſand others.

After the reſtoration, biſhop Burnet's hiſtory of his own times will come in, and carry us to the end of queen Anne's reign; a curious work, but to be read with great caution, as the biſhop had ſtrong prejudices. Salmon wrote an anſwer to it.

Rapin ſeems the next writer of much conſequence. Voltaire, certainly a good judge of hiſtory, calls him our beſt hiſtorian; but, perhaps, he was partial to his countryman. It is, however, a work of much accuracy, but ba ren of reflection, and conſequently heavy in the reading. *Carte*—who emphatically ſtiles himſelf an engliſhman—wrote purpoſely againſt him on the tory ſide of the queſtion.

The latter hiſtorians, Hume, Smollet, &c. you know, perhaps, as well as I do. Hume is certai ly an admirab e writer; his ſtyle bold, and his reflections ſhrewd and uncommon; but his religious and political notions have too often warped his judgment. Mrs. Macaulay

Macaulay has juſt now publiſhed againſt his account of the Stuarts, but I have not yet had an opportunity of reading her book. Smollet wants the dignity of hiſtory, and takes every thing upon truſt; but his books, at leaſt the former volumes, are ſufficiently pleaſing. I have purpoſely omitted a multitude of writers; as, Speed, Baker, Brady, Tyrrell, Echard, Guthrie, &c.

Collections of letters and ſtate papers are of the utmoſt importance, if we pretend to exactneſs; ſuch as, a collection called *the cabala*, Burleigh's, Sydney's, Thurloe's, &c.

The laſt obſervation I ſhall trouble you with is, that ſometimes a ſingle pamphlet will give us better the clue of a tranſaction than a volume in folio. Thus we learn, from the ducheſs of Marlborough's apology, that the peace of Utrecht was made by a quarrel among the women of the bedchamber: hence, memoirs, ſecret hiſtories, political papers, &c. are not to be deſpiſed; always allowing ſufficiently for the prejudice of party, and believing them no farther than they

they are ſupported by collateral evidence *.

* The more early writers of the hiſtory of Britain—the *Anglica normanica ſcripta*, Bede, and the *ſcriptores poſt Bedam*—cannot be ſuppoſed to be very agreeable companions for the idle hour of the claſſical ſtudent: it will, therefore, be only proper to mention, that there are ſuch writers, into which he may ſome time or other chuſe to look; they will identify the ideas of the times, their manners and principles, in which theſe writers lived, and of which they wrote, with more preciſion than the crowd of hiſtorians which refer to them; and it is worthy obſervation that, in general, thoſe writers who relate the hiſtory of their own times, ſuch as Bacon's Henry the VIIth, Camden's Elizabeth, and thoſe alſo who have taken to themſelves ſome particular period of hiſtory, ſuch as Clarendon's hiſtory of the rebellion, and lord Lyttelton's life of Henry the IId, are more calculated for the attentive peruſal of the law ſtudent, as to the particular portion of hiſtory treated of, than the modern compilers of the general hiſtory of their country, whatever of philoſophy, liberality, or elegant compoſition, their annals may poſſeſs.

LETTER

LETTER THE FOURTH.

COURSE OF LAW STUDIES.

FOR general ethics, which are the foundation of all law, read Xenophon's *memorabilia*, Tully's offices, and Woolaſton's religion of nature. You may likewiſe look into Ariſtotle's ethics, which you will not like; but it is one of thoſe books, *qui à limine ſalutandi ſunt ne verba nobis dentur.*

For the law of nations, which is partly founded on the law of nature, and partly poſitive, read Grotius, and Pufendorf in Barbeyrac's tranſlation, and Burlamaqui's *droit naturel*; as theſe authors treat the ſame ſubject in the heads, they may be read together and compared.

When you have laid this foundation, it will be time to look into thoſe ſyſtems of poſitive law that have prevailed in their turn. You will begin of courſe with the roman law; for the hiſtory of which, read Gravina's

elegant work, *de ortu et progreſſu juris civilis*; then read and ſtudy Juſtinian's inſtitutes, without any other comment than the ſhort one by Vinnius. Long comments would only confound you, and make your head ſpin round. Dip occaſionally into the pandects*. After this, it will be proper to acquire

* Although the civil law has long been rejected, both as a rule of government and of property, yet ſo much good ſenſe, and ſuch ſound maxims of juriſprudence, are conſpicuous in the inſtitutes of Juſtinian, and ſuch a fund of ſcience in the roman law, renders valuable the commentary of Vinnius; at the ſame time, we are inſtructed by hiſtory, that ſuch were the rules by which all judicial conteſts reſpecting the roman world were adjudged, and they ſtill are the principles by which the greateſt part of Europe now actually regulate their legal deciſions, that it would be the height of abſurdity to ſuppoſe the education of an engliſh barriſter can be compleat without ſome knowledge of the civil law.

It is worth obſervation, that many of thoſe cauſes which made it eſſential to the roman patron, recommend it alſo to the engliſh pleader. Cicero ſtrongly expreſſes himſelf upon this ſubject: "*Quid ſi ne parvæ cauſæ ſint, ſed ſæpe maximæ, in quibus certatur de jure civili, quod tandem os eſt illius patroni, qui ad eas cauſas, ſine ullâ ſcientiâ, juris audet accedere?*"

Theſe

quire a general idea of feudal law, and the feudal ſyſtem, which is ſo interwoven with

Theſe cauſes, or many of them, exiſt at preſent; the barriſter finding it neceſſary, in the exerciſe of his profeſſion, often to meet, and poſſibly to contend, with the civilian, in the military and maritime courts, thoſe alſo of appeals, the delegates, the commiſſion of review, and the privy council. Both our univerſities boaſt their profeſſors of civil law, to whoſe *ſyllabus* of lectures the ſtudent may be referred for that outline of inveſtigation which it may be neceſſary to fill up in compleating the lawyer's education. Barriſter, vol. 1. p. 12. About the cloſe of the reign of Henry the Iſt. there appeared in Europe a ſtudious and ſpirited affection for the roman civil laws; which, ſince their extermination, together with the imperial legions out of Britain, had been ſucceſſively digeſted into the theodoſian and juſtinian codes, and which, within the ſame period, had at intervals revived in ſome countries, though very little if at all known or attended to in our own.

After a little familiarity with the roman civil laws, particularly thoſe contained in the digeſts, the critical reader, I think, cannot but admire the preciſion, brevity, and elegance, with which they are expreſſed. *Several maxims conveyed in general terms*, and received as part of our immemorial common law, flowed, perhaps, from this ſource.

with almoſt every conſtitution in Europe, that, without ſome knowledge of it, it is

Thus, our legal apophthegm, "that no man ſhall take advantage of his own wrong," appears but a tranſlation of the language of Ulpian; "*nemo ex ſuo delicto meliorem ſuam conditionem facere poteſt.*"

Some of our earlieſt juridical writers, particularly Bracton and Thornton, have tranſcribed conſiderable paſſages from the roman collections. This they did, according to Selden's opinion, not becauſe they thought any foreign code could bind the ſubject of this realm; but, in order that, where the laws of England were ſilent, they might confirm their own problematical or conjectural poſitions of natural reaſon, by the doctrine of the civilians; or, where both laws were conſonant to each other, might, by ſuch citation, illuſtrate and explain our municipal inſtitutions. The ſame learned antiquarian mentions three inſtances, in which arguments taken from the roman law were uſed in our ordinary courts of juſtice: firſt, to mark and eſtabliſh the diſtinction between a natural and civil death, called by the civilians, *media capitis diminutio*—as, of a prior deprived of his priory; 2dly, to prove, that where no time is mentioned for the payment of money, it ſhall be due from the delivery of the inſtrument; and, laſtly, to ſhew, that unreaſonable cuſtoms, which have manifeſtly crept in, *errore primo*, ought, notwithſtanding their duration, to be aboliſhed.

Such

is impoſſible to underſtand modern hiſtory.

Read, *Craig de feudes*, an admirable book for matter and method; and dip occaſionally into the *corpus juris feudalis*, while you are reading Giannoni's hiſtory of Naples, one of the ableſt and moſt inſtructive books that ever was written. Theſe writers are not ſufficient to give you a thorough knowledge of the ſubjects they treat of; but they will give you general notions, general leading principles, and lay the beſt foundation that can be laid for the ſtudy of any municipal law; ſuch as the law of England, Scotland, France, &c. &c.

Such antient examples of practical engliſh lawyers borrowing from the civilians, are, I believe, extremely rare *in more modern times*, ſince the buſineſs of the chancery has become ſo diffuſive; and judges in that court have frequently reſorted, for arguments and illuſtrations, both to the text and comment of the roman civil law.

LETTER

LETTER

From the late Lord ASHBURTON, *better known by the celebrated Name of* DUNNING, *to a Gentleman of the Inner Temple, with Directions for the Study of the Law.*

Lincoln's Inn, March 3, 1779.

DEAR SIR,

THE habits of intercourſe in which I have lived with your family, joined to the regard which I entertain for yourſelf, makes me ſolicitous, in compliance with your requeſt, to give you ſome hints concerning the ſtudy of the law.

Our profeſſion is generally ridiculed, as being dry and unintereſting; but a mind anxious for the diſcovery of truth and information will be amply gratified for the toil, in inveſtigating the origin and progreſs of a juriſprudence which has the good of the people for it's baſis, and the accumulated wiſdom and experience of ages for it's improvement.

provement. Nor is the ſtudy itſelf ſo intricate as has been imagined; more eſpecially, ſince the labours of ſome modern writers have given it a more regular and ſcientific form. Without induſtry, however, it is impoſſible to arrive at any eminence in practice; and the man who ſhall be bold enough to attempt excellence by abilities alone, will ſoon find himſelf foiled, by many who have inferior underſtandings but better attainments. On the other hand, the moſt painful plodder can never arrive at celebrity by mere reading; a man calculated for ſucceſs, muſt add, to native genius, an inſtinctive faculty in the diſcovery and retention of that knowledge only which can be at once uſeful and productive.

I imagine, that a conſiderable degree of learning is abſolutely neceſſary. The elder authors frequently wrote in latin, and the foreign juriſts continue the practice to this day*. Beſides this, claſſical attainments

* See, preface to ſir J. Davis's rep. fo. 6, 7, and pref. to 3d rep. alſo, Duck de us. jur. civil. lib. 2. c. 1. p. 110.

contribute

contribute much to the refinement of the underſtanding, and the embelliſhment of ſtyle. The utility of grammar, rhetoric, and logic, are known and felt by every one. Geometry will afford the moſt appoſite examples of cloſe and pointed reaſoning; and geography is ſo very neceſſary in common life, that there is leſs credit in knowing than diſhonour in being unacquainted with it. But it is hiſtory, and more particularly that of his own country, which will occupy the attention, and attract the regard, of the great lawyer. A minute knowledge of the political revolutions and judicial deciſions of our predeceſſors, whether in the more antient or modern æras of our government, is equally uſeful and intereſting. This will include a narrative of all the material alterations in the common law, and the reaſons and exigences on which they were founded.

I would always recommend a diligent attendance on the courts of juſtice; as, by that means, the practice of them, a circumſtance of great moment, will be eaſily and naturally acquired. Beſides this, a much ſtronger

impreſſion will be made on the mind by the ſtatement of the caſe, and the pleadings of the counſel, than from a cold, unintereſting detail of it, in a report. But, above all, a trial at bar, or a ſpecial argument, ſhould never be neglected. As it is uſual on theſe occaſions to take notes, a knowledge of ſhort-hand will give ſuch facility to your labours, as to enable you to follow the moſt rapid ſpeaker with certainty and preciſion. Common-place books are convenient and uſeful; and, as they are generally lettered, a reference may be had to them in a moment. It is uſual to acquire ſome inſight into real buſineſs, under an eminent ſpecial pleader *, previous to actual practice at the bar: this

* The ſpecial pleader's office, as diſtinct from the attorney's, was formerly unknown; now, this part of the profeſſion forms a diſtinct branch, and ſpecial pleaders draw pleadings till they have eſtabliſhed a name to enſure them clients in Weſtminſter Hall.

Theſe offices are now to be attended by the ſtudent, if he wiſhes to reduce a probability of ſucceſs to a moral certainty. It is true, many great names have riſen; and, firſt-rate abilities co-operating with fortunate circumſtances,

this idea I beg leave ſtrongly to ſecond; and, indeed, I have known but a few great men who

cumſtances, have brought forward, in early life, ſome who have not ſubmitted to this mode of education; but theſe may be conſidered as exceptions. It is certain, more ſound lawyers have proceeded from a ſpecial pleader's office, than the profeſſion can boaſt of educated in any other manner. Eloquence will not be acquired there; but legal preciſion, technical reaſoning, and ſound law, will; together with an opportunity of demonſtrating, to thoſe whoſe good opinion it is his intereſt to poſſeſs, that he *has* acquired theſe eſſential qualifications.

Declarations, ſpecial pleas, and all the ſubſequent altercations of law, are become ſo verboſe, that it is ſcarcely poſſible, by three or four years attendance in a pleader's office, to collect a ſufficient number of precedents in the different ſtages of an action, to form a ſtock ſufficient for future practice; the ſtudent's diſcernment muſt, therefore, point out to him thoſe moſt worthy his notice: theſe he ſhould copy, or have copied, into folios of precedents, as they will be abſolutely neceſſary to him when he draws on his own account; the language of pleading ſhould by all means be obtained.

If, after proper conſideration, the courts of equity are choſen for the *debût* of the young barriſter's qualification, the ſame kind of ſchools are open in this line

who have not poſſeſſed this advantage. I here ſubjoin a liſt of books neceſſary for your peruſal and inſtruction, to which I have added ſome remarks; and, wiſhing that you may add to a ſucceſsful practice, that integrity which can alone make you worthy of it,

I remain, &c. &c.

JOHN DUNNING.

alſo. The draftſman's office will afford him a practical knowledge of bills, anſwers, exceptions, demurrers, &c. &c. and well may the perſon who draws them, be called—*a draftſman.*

The increaſing voluminouſneſs of the law, has induced many to addict their ſtudies more peculiarly to ſome particular branch of practice.

The great nicety required in alienating or encumbering eſtates, and in ſecuring them according to limitations to be governed by future contingences, either by demiſe or otherwiſe; and the exactneſs alſo neceſſary in certain inſtruments reſpecting perſonal property, and in articles of copartnerſhips, and the like; form the laborious occupation of *conveyancers*, who rarely engage in any other line of the profeſſion.

COURSE

COURSE OF LAW READING *.

READ *, Hume's hiſtory of England, particularly obſerving the riſe, progreſs, and declenſion, of the feudal ſyſtem. Minutely attend to the ſaxon government that preceded it, and dwell on the reigns of Edward I.—Henry VI.—Henry VII.—Henry VIII.—James I.—Charles I.—Charles II. and James II.

Blackſtone †. On the ſecond reading, turn to the references.

Mr.

* There is ſcarcely any thing of greater importance to a ſtudent, than a proper choice of books: not that his collection ſhould conſiſt of ſuch *only*; it being neceſſary, before his entrance upon this ſtudy, that he be furniſhed with the whole courſe of the law, to which he may occaſionally refer.

This idea is enforced in a very ſenſible work, entitled, the barriſter, in 2 vols. 12mo. and publiſhed in 1790 or 1791. The author is mr. Conſt, a very riſing character at the bar.

† The following critique has been made upon theſe commentaries.—

"The

Mr. juſtice Wright's learned treatiſe on tenures.

Coke

"The commentaries of Blackſtone have met with ſucceſs, but have not deſerved it. At a time when taſte and literature are very much advanced in Great Britain, it was neceſſary it's inhabitants ſhould be preſented with a *readable* ſyſtem of law. This judge Blackſtone did, and *no more*: we find in it no invention, no philoſophy, no erudition; it may inſtruct a country gentleman, but lawyers receive no benefit from it.

"Theſe commentaries do not go ſufficiently into the hiſtory and antiquities of the law; deep reſearches did not ſuit his capacity; he ſhould all along, where the ſubject permitted it, have appealed to the ſaxon government and policy. More modern uſages ſhould have been illuſtrated by ancient cuſtoms, and every point of the conſtitution ſhould have been traced to it's ſource. He found it a much eaſier taſk to deduce his ſubject from the conqueſt, and to tranſcribe, with a few improvements of language, the matter which is heaped together in lord Coke, or in Maddox, than to walk in a path where there was no ſuch genius to direct him: a vaſt labyrinth preſented itſelf to him; he was conſcious of his weakneſs, and recoiled.

A great many ingenious things have been written on the nature and plan of the feoded polity, by ſir Matthew Wright: theſe, the doctor found it eaſier to copy, than communicate any ideas of his own on that very curious

Coke Littleton, eſpecially every word of fee-ſimple, fee-tail, and tenant in tail.

Coke's curious and intricate ſyſtem. The crabbed, rugged, and unequal ſtile, of Bacon, Seldon, and Spelman, diſguſts all readers of taſte; but it is in theſe, and in authors that reſemble them, that the induſtrious ſtudent muſt dig for legal knowledge. It is much to be wiſhed, that ſome lawyer, whoſe views are enlarged by ſcience, and whoſe penetration is ſharpened by practice, would apply himſelf to compoſe a work, on a plan more original, liberal, and extenſive, than the commentaries; which, whenever that is done, will ſlide into inſignificance and oblivion: NOTWITHSTANDING theſe imperfections, the commentaries of Blackſtone is one of the beſt books for the ſtudent to take for his foundation, as being the moſt methodical."

The *firſt* book for a beginner, in this very abſtruſe ſtudy, is, " *Eunomus*, or, dialogues on the law;" 4 vols. 12mo. written by the late ſerjeant Wynn.

This little work will facilitate almoſt innumerable difficulties; particularly, in explaining and ſimplifying matters of practice, and other technical parts of the profeſſion.

Another uſeful and neceſſary book, is, " Woodeſon's elements of juriſprudence;" as well as his lectures on the laws of England, given at Oxford.

The elementary part of the profeſſion muſt be intimately underſtood; the theory muſt be ſtudied, or the practice

Coke's inſtitutes; more particularly, the Iſt and IId; and ſerjeant Hawkins's compendium.

Coke's

practice of it will always remain deſultory and uncertain.

Abridgements, and digeſts, are only ſo many dictionaries to be applied to by the ſtudent; but they do not point out the courſe of his ſtudies.

Blackſtone's commentaries, is recommended as the next book proper to go into the ſtudent's hands, after Eunomus. Let him conſider it, ſays the author of the barriſter, as an academy figure in the poſſeſſion of a young painter, where every contour, and outline, is ſtrongly and with anatomical exactneſs marked; and it is his buſineſs, by lights and ſhades, by tints and colours, to finiſh it to a natural, beautiful repreſentation of the human figure. To effect this, a copy of Blackſtone, very fully interleaved with blank paper, in quarto, ſhould be obtained; the marginal references to the authorities ſhould be examined; the books referred to, be conſulted; notes ſhould be entered of errors—of which, it muſt be confeſſed, there are many—together with what additional ideas may be collected on the ſubject. The topic ſhould not even then be conſidered as finiſhed; but ſubſequent notices ſhould be inſerted, as future readings, obſervations, and practice, may tend to render the knowledge of the law, on each head, more full, or preſent determinations in any wiſe

to

Coke's reports.—Plowden's commentary.—Bacon's abridgement; and firſt principles of equity.—Pigott on fines.—Reports * of Croke, Burrow, Raymond, Saunders, Strange, and Peere Williams.—Paley's maxims.—Lord Bacon's elements of the common law.

to render the knowledge of the law, on each head, more full, or preſent determinations in any wiſe alter the doctrine laid down by precedents of paſt times. By ſuch means, the commentaries may become the corner ſtone of a common-place book, vaſtly ſuperior in method to the alphabetical ones of a dictionary, full as eaſily referred to, and diſplaying, in ſyſtematic regularity, the theory, the antient practice, and modern deviations, on every topic of law.

* The printed reports exiſt, in a continued ſeries, from Edward II. to the preſent time, extremely numerous and defective. Originally, they were collected and publiſhed annually, by perſons appointed by the king, and thence acquired the name of year books.

This method was attempted to be revived in the time of king James.

PLAN OF EDUCATION

FOR THE ENGLISH BAR,

Communicated to a young Friend, by Lord THURLOW.

A Good ſcholaſtic education, founded upon grammar; and ſo much verſification, as will give a taſte for the beſt greek and latin poets, and *direct the pronunciation* of thoſe languages, eſpecially of the latter, which will frequently be wanted.

A reſidence at the univerſity of Cambridge or Oxford for four years. In the firſt and ſecond years, ſo much of Euclid, Rutherford, and Locke, muſt be attended to, as may be neceſſary for a general ſketch of the mathematics, natural philoſophy, and the rules of thinking; with the leſs laborious and moſt agreeable improvements in the beſt claſſical authors, not forgetting the engliſh writers.

In the third year, a cloſe attention to chronology, geography, and hiſtory, both antient and modern, with Campbell's ſtate of Europe; the trade, intereſt, and policy, of neighbouring nations.

In the fourth year, to learn french; to have a curſory view of Juſtinian's code and digeſt, and civil law; to take up the roman hiſtory from the time of Julius Cæſar: get a general idea and knowledge of his expeditions into Gaul and Germany, and both invaſions of Britain; collecting his anecdotes and cuſtoms of the people.

Then, *Tacitus de moribus germanorum, & de vitâ Agricolæ*; then Selden's *janus anglorum*; then Wotton's *leges walliæ*; then Wilkins's *leges ſaxonicæ*; then, norman ſtatutes in Ruffhead, with *magna charta* to the 1ſt of Richard I, when our *leges non ſcriptæ* are ſaid to end, and ſtatute law, pleadable as ſuch, begins.

Almoſt all the great volumes, and frightful parts of the plan, will require only a turning over, to get a general knowledge of the times.

Before

Before Juſtinian, ſhould be read Fernier's hiſtory of the civil law; and, before Wilkins, Hale's hiſtory of the common law.

When the ſtudent is thus arrived at the beginning of our ſtatute law, it will be ſoon enough for him to take up Blackſtone; who, by quotations and references, will excite him to look at Bracton—Fitzherbert—Coke upon Littleton—Brook—the year books—old reporters—doctor and ſtudent—commentators, &c. &c.

Then will the ſtudent lay for himſelf ſuch a foundation of legal and conſtitutional knowledge, as will enable him to follow his profeſſion with eaſe, and ſecure to himſelf a proſpect of imitating lord Mansfield, lord Loughborough, and ſir James Eyre; to the honour of himſelf, and the certain dignity of his family.

Could the writer of this, chuſe his court and practice; he conceives, the moſt antient, and the moſt learned, lies in the court of exchequer.

NATURAL ENDOWMENTS
REQUISITE FOR THE STUDY OF THE LAW.

Mr. SIMPSON, *who has written on the ſtudy of the law, enumerates the following natural endowments, as neceſſary to the ſtudent's ſucceſs in it.*

1. PERCEPTION.

QUICKNESS of perception, he ſays, is the primary and diſtinguiſhing characteriſtic of a great genius, and is a faculty peculiarly neceſſary to a lawyer. Perception is, to the mind, what the eye is to the body. If the ſight be dim, or imperfect, the ideas communicated will be imperfect alſo: the near-ſighted man muſt have the object brought cloſe to his eyes, as he can ſee but little at once; and requires time to ſee all the parts ſucceſſively, before he can pronounce concerning it's ſymmetry or due proportion. In the ſame manner, the man of ſlow capacity muſt have the queſtion long before him; revolve

revolve it over and over again in his mind, and weigh each circumſtance ſingly, in order to form a judgment of the whole: but the quick-ſighted man takes in the object, with all it's relations and conſequences, at a glance, and the act of conception and judgment ſeems almoſt formed and executed at the ſame moment. Thoſe, in ſhort, endowed with this brilliant qualification, are in the faireſt way of becoming eminent: *with it*, a man *may* fail; but, *without it*, he can never be conſiderable.

2. MEMORY.

A GOOD memory is an indiſpenſable requiſite in this profeſſion.

Johnſon happily terms it, *the ſurveyor of reaſon*; the power which places thoſe images before the mind, upon which the judgment is to be exerciſed, and which treaſures up the determinations that are once paſſed, as the rules of future actions, or grounds of ſubſequent concluſions.

3. JUDGMENT.

3. JUDGMENT.

Patience, and ſlowneſs of belief, are the ſtrongeſt marks of ſound judgment, and are no where more neceſſary than in the ſtudy of the law; and, for one perſon of great genius that makes a figure in this profeſſion, there are, perhaps, a hundred ſucceſsful, through a ſteadineſs of temper, patience in ſtudy, and ſlowneſs in judgment *.

4. ELOCUTION.

Elocution is an eſſential qualification; without which, he will in vain poſſeſs every other: and it is no uncommon thing to ſee men of quick parts, and fluency of ſpeech, outgo men of far ſuperior knowledge. The man of ſenſe and candour, however, who ſtates his facts with truth, conciſeneſs, and perſpicuity, and from

* Introductory to the formation of good judgment, the ſtudent will find the peruſal of "Gerrard, on genius and taſte," a very uſeful work.

thence draws juſt and natural deductions, will have more weight and influence in a britiſh court of juſtice, than any one can ever arrive at in this country, by the mere pomp and ſplendor of grecian or of roman eloquence *.

5. LEARNING.

* Oratory is nothing more than being able to imprint on others, with rapidity and force, the ſentiments of which we are ourſelves poſſeſſed. We may be thus impreſſed, without being concerned; and our paſſions are often excited, on the ſide of the ſpeaker, though reaſon would reſiſt their impulſe. Whatever, ſays Boileau, we can clearly conceive, we can clearly expreſs; whatever we conceive with warmth, is expreſſed in the ſame manner. When the emotion is ſtong, the words are almoſt involuntarily uttered, to give our feelings all the force of expreſſion. The ſpeaker, who calmly conſiders the propriety of his diction, cools in the interval; the ſpirit is fled; and, not being moved himſelf, he ceaſes to affect his hearers. Thus, we ſee, eloquence is born with us before the rules of rhetoric, as languages have been formed before the rules of grammar. Nature alone is miſtreſs of the art; and, perhaps, every perſon, who underſtands the language in which he ſpeaks, who has great intereſt in the cauſe he defends, or is warmly attached to his party, might be an orator. This is the reaſon that the moſt barbarous

5. LEARNING.

A conſiderable degree of learning is eſſentially neceſſary, to make a man at all reſpectable

barous nations ſpeak in a ſtile more affecting and figurative than others: they feel with paſſions, unabated by judgment, and tropes and figures are the natural reſult of their ſenſations. Theſe ſtrong and vigorous emotions can be no where taught, though they may be extinguiſhed, by rules. We find no grecian orator truly ſublime, after the precepts of Ariſtotle, nor roman orator, after the lectures of Quinctilian. Their precepts might have guarded their ſucceſſors from falling into faults; but, at the ſame time, they deterred them from riſing into beauty: cool, diſpaſſionate, and even, they never forfeited their title to good ſenſe; they incurred no diſguſt, but they raiſed no admiration. If rules in general, of this kind, are of ſuch inutility, how much more muſt they lead us aſtray, when we take the precepts given by the orators of one country, to direct the pleadings of another? In fact, thoſe men, who have taken pains to reduce what is properly a *talent* to an *art*, have but little advanced themſelves. By their means, the mind, attentive to her own operations, mixes judgment with all her enthuſiaſm; and, like the man who is ever reflecting on the dangers of every hazardous enterprize, is at laſt ſa-

ſpectable in this profeſſion; and he who is moſt diſtinguiſhed by his learning will be moſt likely to witneſs the greateſt ſucceſs in this profeſſion.

One obſervation, however, ſeems extremely neceſſary; which is, that great care muſt be taken, that the thirſt of *general* knowledge hurries him not too far from his *particular* ſtudy. Here his views muſt ultimately terminate; and, whatever ſkill he may have acquired in other ſciences, it muſt ſtill be made ſubſervient to his proficiency in this. If, at any time, he enters upon other purſuits, of no immediate connection with his profeſſion, he muſt conſider them not as buſineſs, but as relaxation. In this reſpect, the advice of Socrates, as given in Xenophon, is extremely applicable and excellent.

"He was very careful to fix the bounds, "in every ſcience; beyond which, he would "ſay, no perſon, properly inſtructed, ought to

tisfied with the advantages of ſafety, unconcerned about the rewards attending ſucceſs.

See what mr. Hume ſays upon this ſubject, in his eſſays.

"paſs.

" paſs. Socrates alſo recommended the ſtudy " of arithmetic to his friends, and aſſiſted " them, as was his cuſtom, in tracing out " the ſeveral parts of it, as far as might be " uſeful; but here, as elſewhere, fixed " bounds to their enquiries, never ſuffering " them to run out into vain and trifling diſ- " quiſitions, which could be of no advantage " to themſelves or others."

Another indiſpenſable qualification of the barriſter is—a good conſtitution. In other profeſſions, no ſuch neceſſity is eſſential. The divine, and the phyſician, may riſe to fame, riches, and honour, with a weakly, tottering frame; ſtrength of mind, ſtrength of lungs, ſtrength of nerves, equability of temper, are not abſolutely neceſſary to them; the one may deliver, with dignity and pathos, the ſervice of his office, and the other may preſcribe with ſkill and ſucceſs, without poſſeſſing either of theſe qualities: but they are, *all* of them, *eſſential* to the lawyer; and, if the parents of the young intended chancellor, or himſelf, are conſcious that he fails conſtitutionally in any

of

of theſe points, let him turn his attention to another object, and riſe to fame and dignity in ſome other claſs of ſociety, this profeſſion does not offer him a ſhadow of ſucceſs.

Great abilities, and great parts, continues the author of the barriſter, by which are intended, thoſe abilities which have been proved in the courſe of education by quick ſcholaſtic attainments, elegant claſſical taſte, witty replication, ſtrong and poetical imagination, quickneſs in compoſition; all of which have, at times, been crowned with academic or literary honours; are not eſſential to the law ſtudent: but, as it is ſuppoſed that the ſtudent attempts the character ſo elaborately deſcribed by Cicero, of a perfect orator—"*omni laude emulatus orator*;" theſe elegant accompliſhments, this finiſhing *tourneur*, ſhould be prominent to his view and imagination *.

After all, one more qualification is requiſite—a decent aſſurance. Although it is al-

* See the barriſter, vol. I. p. 8 and 9. and note 2. p. 124.

lowed,

lowed, ſays this writer, ſo copiouſly quoted, that modeſty and diffidence are frequently allied to great abilities, and are by ſome eſteemed ſymptomatic of them; yet the exceſs of it muſt, by ſome means, be got rid of, or the barriſter will be totally diſqualified for the diſcharge of his profeſſional duties.

Two conceptions of one's abilities, diametrically oppoſite to each other, produce this effect on different minds: the one has it's foundation in too *humble* an opinion of our faculties; the other, in too *high* a conceit of our own importance—the one abſolutely ſinks under a falſe conception of the weight and importance of the buſineſs to be undertaken, in compariſon of our powers to perform it; the other fancies the liſtening multitude to be as much impreſſed with a high opinion of the abilities of the perſon about to addreſs them, as he himſelf, and feels tremblingly alive all over, leſt he ſhould not anſwer the imagined exceſs of their expectation.

To the too humble mind, the advice of lord Cheſterfield to his ſon may properly be given:

given.: "to govern mankind, we muſt not over-rate them; and, to pleaſe an audience as a ſpeaker, we muſt not over-value them. When I firſt came into the houſe of commons, ſays he, I reſpected that aſſembly as a venerable one, and felt a ſort of awe upon me; but, on better acquaintance, that awe ſoon vaniſhed, and I diſcovered that, of the five hundred and ſixty members, not above thirty could underſtand reaſon, and that all the reſt were *peuple*; that thoſe thirty only required plain common ſenſe, dreſſed up in good language; and that all the others only required flowing and harmonious periods, whether they conveyed any meaning or not, having ears to hear, but not ſenſe to judge: theſe conſiderations made me ſpeak with little concern the firſt time, with leſs the ſecond, and with none at all the third."

If the idea his lordſhip thus attempts to impreſs, will bear application to that reſpectable aſſembly, how much ſtronger may it apply to all courts of juſtice! and how proper may it be, to inculcate on the humble mind a higher idea of it's own abilities, when

when placed in compariſon with thoſe of it's auditors; which is done by raiſing the conceptions of the one, as well as by diminiſhing the importance of the other.

To him, whoſe baſhfulneſs ariſes from too high an opinion of his own importance, doctor Johnſon addreſſes this precept—

"He, that imagines an aſſembly filled with his merit, panting with expectation, and huſhed with attention, eaſily terrifies himſelf with the dread of diſappointing them, and ſtrains his imagination in purſuit of ſomething which will vindicate the veracity of fame, and ſhew that his reputation was not gained by chance; he conſiders, what he ſays, or does, will never be forgotten; that renown, or infamy is ſuſpended upon every ſyllable, and that nothing ought to fall from him, which will not bear the teſt of time: under ſuch ſolicitude, who can wonder that the mind is overwhelmed; and, by ſtruggling with attempts beyond her ſtrength, quickly ſinks into languiſhment and deſpondency.

"Thoſe who are thus oppreſſed by their own reputation, will perhaps not be comforted, by hearing that their cares are unneceſſary: but, the truth is, that no man is much regarded by the reſt of the world; he that conſiders how little he himſelf dwells upon the condition of others, will learn how little of the attention of others, is attracted by himſelf. While we ſee multitudes paſſing before us, of whom, perhaps, not one appears to deſerve our notice, or excite our ſympathy—we ſhould remember, that *we* likewiſe are loſt in the ſame throng: that the eye which throws a glance upon *us*, is turned in a moment on *him* who follows us; and, that the utmoſt we can hope or fear is, to fill an idle hour with prattle, and be forgotten."

The metropolis will give the ſtudent, in the inns of court, frequent opportunities of practiſing public ſpeaking. *Clubs* may be mentioned among the means of acquiring a habit of ſpeaking the ſentiments which may ariſe in the mind, with eaſe and good language.

It

It is believed that ſome, at all times, may be found, frequented by the profeſſion, where ſubjects of *literature*, and *law*, are canvaſſed with freedom and politeneſs.

In ſuch ſocieties, young men, who have received a liberal education, learn to diſcuſs topics with each other, on which they would be ſilent in more formal companies; and, when once the tongue finds itſelf at eaſe before an aſſembly of men well educated, it will not tremble when it ſpeaks before the multitude.

CHOICE OF BOOKS,

ATTENDING COURTS, AND COMMON-PLACE BOOKS.

THE choice of books is of the greateſt conſequence *; for a very valuable ſelection, the editor refers to the preceding part of this work, to which he ſubjoins the following admonitory obſervations—

* In this profeſſion, as in every other branch of ſtudy, an attachment, either to antient or modern learning, excluſively of the other, is partial and ill-judged: the one is more immediately for uſe, while the other is more generally only for ornament; but, though the application is entirely on one ſide, the ornamental and illuſtration muſt often come from the other.

It would be an unprofitable fatigue, to begin with the doctrines of attornment, collateral warranties, and ſuch antiquated titles; but, after having read the modern books, he ſhould reſort to the old. Lord Coke promiſes no harveſt, to thoſe who are content to reap in the narrow ſpace of their own age—out of the old fields, he ſays, muſt ſpring the new corn.

Let

Let the ſtudent interleave the quarto edition of Blackſtone, compare the different authorities referred to, and make extracts from the authors cited; having done this, he will find his fund of legal knowledge greatly increaſed, and be enabled to read, with ſome degree of pleaſure, the old reports and comments, which, except for this previous aſſiſtance, he would ſcarcely have looked upon without diſguſt.

A diligent attendance upon the courts of juſtice, is abſolutely neceſſary; and, to profit by ſuch attendance, he muſt be equally diligent in his attention to his note-book.

In this, ſhort-hand will be eminently uſeful, and tend greatly to facilitate his labours.

To theſe great aids, a common-place book muſt be added; and, the beſt that can be deviſed, after the plan that has before been recommended with Blackſtone, is an interleaved Comyns's digeſt *; and if, during the courſe

* It may be proper to conſider the character juſtly due to the three great abridgements of the law. That of Mr. Viner is the moſt copious, and is enriched with the

courſe of the ſtudent's reading the beſt authors, he will take the trouble of comparing them, he may eaſily fill up ſuch parts as he may judge too conciſe and defective. By daily, alſo, abſtracting the ſubſtance of his own notes, and arranging them under the

the publication of ſeveral determined caſes, either not at all, or, generally ſpeaking, not ſo fully, reported elſewhere. The work which paſſes under the name of Bacon's abridgement, is more in the ſtile of an inſtitute; the author extracts, for the moſt part, from the caſes adjudged, in the margin, what he takes to be the reſult of them; and it is, therefore, to be read with caution. This is ſuppoſed to have been partly compiled by lord chief baron Gilbert. Laſtly, the digeſt of lord chief baron Comyns, deſerves to be mentioned with particular encomiums. In this admirable collection, the uſual method purſued of conveying the doctrine on any ſubject, is to ſet down a good portion; then, to illuſtrate it by examples; and, finally, to reſtrain it by exceptions: all which is done with remarkable clearneſs and conciſeneſs of expreſſion, and the deſired information is ſeldom long ſought after in vain. Theſe abridgements are to be conſidered as books of reference, or general indexes; not to be quoted in courts, except when they give an account of the date and ſubſtance of an adjudged caſe; but recourſe muſt be then had to the reporters, and others, whom they cite.

ſame

ſame titles, he will, in time, be maſter of ſuch a common-place book as he may aſſuredly rely upon, for the ſolution of the many doubts and difficulties that will naturally occur in the courſe of his profeſſion.

Should the ſtudent, after having enlarged his mind by ſtudy, and receiving all the benefits of a liberal education—but by no means till then—ſpend a year or two in the office of a ſpecial pleader, or ſome great law-agent, where he has opportunities of ſeeing a multitude of forms in all kinds of legal proceedings, it will undoubtedly facilitate his ſtudies, and help him to practice; and he will acquire, by it, what practice alone can give *.

There is ſome excellent advice given to the law-ſtudent, in the preface to Roll's abridgement; and, the editor flatters himſelf, it will not be conſidered ſuperfluous, or without it's uſe, to preſent the following extract from it—

* See, analyſis of practice, p. 105.

"I muſt

"I muſt, in general, ſay thus much to "the ſtudent, it is neceſſary for him to ob- "ſerve a method in his reading and ſtudy. "Let him aſſure himſelf, though his memory "be ever ſo good, he ſhall never be able "to carry on a diſtinct, ſerviceable memory, "of all or the greateſt part he reads, to the "end of ſeven years, nor a much ſhorter "time, without the help of method; nay, "what he hath read ſeven years ſince, will, "without the help of method, or reiterated "uſe, be as new to him, as if he had ſcarcely "ever read it. The method he propoſes is "this—1ſt. To ſpend two or three years in "the diligent reading of *Littleton*, *Perkins*, "*doctor and ſtudent*, *Fitzherbert's natura bre-* "*vium*, and eſpecially *lord Coke's com-* "*mentary*, and poſſibly his *reports*. This "will fit him for exerciſe, and enable him "to improve himſelf by converſation and "diſcourſe with others, and enable him pro- "fitably to attend the courts at Weſtminſter. "After two or three years ſo ſpent, let him "get a large common-place book, divide

" it into alphabetical titles, or uſe any good " abridgement.

" Afterwards, it might be fit to begin to " read the *year books*; and, becauſe many of " the elder year books are filled with law " not ſo much now in uſe, he may ſingle " out, for his ordinary reading, ſuch as are " moſt uſeful; ſuch as the beſt part of Ed- " ward III. the book of aſſizes, the 2d " part of Henry V. Edward IV. Henry VII. " and ſo come down, in order and ſucceſſion " of time, to the latter law; viz. *Plowden*, " *Dyer*, *Coke's reports*, the ſecond time, and " *other later reports*. As he reads, it is fit to " compare caſe with caſe, and to compare " the pleadings of caſes with the books of " entries, and eſpecially *Raſtall's*, which is " the beſt. What he reads, he ſhould enter " the abſtract of into his common-place " book, under their proper titles."

To the above excellent advice, may be repeated, that of attending the ſpecial pleader's office; which, coupled with diligence

diligence, a good conſtitution, and only common talents, will *enſure* a very reſpectable ſhare of ſucceſs in the profeſſion.

RHETORIC AND LOGIC.

THE ſtudy of rhetoric and logic is indiſpenſably neceſſary, and they ſhould both go together, as tending to the ſame object, *perſuaſion*. *Logic* uſes the conciſe language of reaſon only; *rhetoric* embelliſhes it's arguments with the graces of ſtile, and enlivens them with the warmth of ſentiment. *Logic* addreſſes itſelf perſonally to the mind; *rhetoric* conveys it's reaſons through the interpoſition of the heart.

The art of ſpeaking is learned, by ſtudying the precepts laid down by eminent maſters, by reading, and compoſition.

Precepts are, with regard to rhetoric, what the ſkeleton is to the human body; by ſtudying it, one may learn to know the diſtribution of the nerves, but it can never give an idea of the plenitude and beauty of form: the ſtudy of the rules of rhetoric is, to the pupils of eloquence, what anatomy

is to the young painter; in order to *deſign* correctly, he muſt know the ſtructure of the body, but however perfect he may be in this knowledge, the art of colouring is ſtill wanting, and to give life to the canvas, he muſt ſtudy nature, and thoſe who have excelled in imitating nature.

Reading is the food of the mind; it forms taſte, enriches knowledge, and refines reaſon: the number of books, on which a ſtudent ſhould form his taſte, is by no means conſiderable; maſter-pieces only ſhould be ſtudied, he ſhould attach himſelf to their thoughts, and acquire, by every exertion of aſſiduity, that harmony of ſtile, which wins the ſoul by charming the ear, thoſe felicities of expreſſion that rules cannot reach, and that combination of ſounds, by the means of which he will beſt paint and impreſs his ideas.

After a proper fund of knowledge has been acquired by reading, compoſition is neceſſary. Having made himſelf acquainted with the firſt writers in every branch of literature, he ſhould compare them together, and

contraſt

contraſt the ſtrength of one with the ſweetneſs of the other: he muſt mark the peculiar manner, and diſtinguiſhing character, of each; obſerve the many ways there are to arrive at excellence in the ſame ſpecies of oratory; he muſt dwell with pleaſure on a fine paſſage, and put the queſtion to himſelf—had he the ſame ideas to communicate, how would he expreſs them? Thus, by working in the rich mines of literature, he will gradually find, that a happy and perſpicuous method will ſteal into his practice, and that eloquence will ingraft itſelf upon genius.

To the barriſter, *logic* is pre-eminently uſeful; it gives preciſion and accuracy to ſtile, vigour to our conceptions, method to ideas, and certainty to reaſoning. It prompts ſagacity to unveil a ſophiciſm; it infuſes power to enforce perſuaſion, and refute objection; it will inſpirit the means of conviction, and enſure ſucceſs.

Logic and rhetoric are one and the ſame art, in two different poſitions. The difference was well underſtood by Zeno, when he

he compared logic to the hand ſhut, and rhetoric to the hand open: *i. e.* one to the fiſt, on account of it's collected power; and the other to the palm, for the beauty of it's proportions. *Logic* draws, *rhetoric* colours; *logic* ſketches, and traces the plan; *rhetoric* fills, ſtrengthens, adorns, beautifies, and animates: *both* tend to perſuaſion by different ways.

There are many excellent treatiſes, both of rhetoric and logic, that demand the ſtudent's peculiar attention, and to which he is referred; their leading features he will find briefly but moſt judiciouſly drawn, in in a little work, entitled, "deinology," or "the union of reaſon and elegance," being inſtructions for a young barriſter; a ſmall octavo volume, publiſhed in 1789.

OBSERVATIONS
ON THE EXAMINATION OF WITNESSES.

AN examination of *vivâ voce* evidence, is one of the moſt difficult branches of the multifarious employments of a barriſter. More cauſes are loſt, by failing in this part of the duties of the profeſſion, and more got by excellency in it, than will at firſt ſight meet with belief; and it is remarkable, that there is no part of the barriſter's attainments, natural or acquired, in which he ſo generally fails. The following ſtrictures, attentively obſerved, cannot fail being eminently uſeful to him.

Rhetoric borrows ſome of it's beſt rules from it's ſiſter ſcience, *geometry*; which teaches the effect of proper arrangement of principles and propoſitions, conſtituting a gradation of truths, each ariſing out of that

which preceded it, and all mutually ſupporting and confirming one another.

The art of reaſoning, or rather of thinking geometrically, is neceſſary to give the talent of extracting teſtimony from the mouths of witneſſes, a talent of the higheſt importance to the profeſſion.

An engliſh advocate muſt often employ himſelf in collecting the materials for his ſpeech from the mouths of witneſſes, before he can have occaſion to combine the principles of rhetoric and logic in the compoſition of it; and, conſidering the nature of oral teſtimony, from what ſources, and under what an infinite variety of circumſtances it is to be obtained, and how very deficient the gentlemen of the profeſſion generally are in the management of evidence, it follows, that the examination of witneſſes muſt be, in a degree, of a technical nature, and that there are certain principles on which it ought to be founded, and rules by which it ſhould be conducted.

Intemperate behaviour to witneſſes, is at once weak and indecent; the dignity of a court

court of juſtice is injured by it: but it is, nevertheleſs, the duty of an advocate, to doubt every thing that is ſaid by a witneſs, and try every thing, by every poſſible fair teſt, to ſift a witneſs to the bottom, and put his teſtimony to the ſevereſt teſt.

There is no regular treatiſe expreſsly upon this ſubject, but the following obſervations will be found uſeful.

In the examination of witneſſes, we ſhould lay our foundation in the nature of things. The object is, to extract teſtimony from the mouths of thoſe who are conſcious of the facts which are the ſubjects of enquiry; conſequently, we have to deal with witneſſes of all deſcriptions, endowed with the moral and natural qualities of the human mind, with innumerable ſhades of difference, in whom the powers of ſenſe, the original inlets of all perception, are more or leſs active and exquiſite, with variations almoſt infinite. The mental, as well as the viſual ray, has it's different refractions, according to the different *media* through which it paſſes; there is, therefore, a degree of imperfection and

uncertainty in the very nature of human teſtimony, and there may be a difficulty in aſcertaining facts, with preciſion, from the mouths of witneſſes of the beſt credit, and from men the moſt collected and accurate.

Before any attempt is made to examine a witneſs, it will be neceſſary to have a clear and comprehenſive idea of the points to be maintained; of the outline of the facts of the caſe; of the place and order, in which every circumſtance already diſcloſed, or to be diſcloſed, or probably exiſting, in the caſe, range themſelves; to fill the outline of the conſiſtence, or inconſiſtence, of teſtimony given or to be given, with all the collateral circumſtances that may come out in evidence. If he is ſo far maſter of his caſe, as to know how to digeſt his materials into queſtions adapted to his purpoſe, and properly arranged, he may begin to examine.

Without the habit of thinking logically and geometrically, it will be impoſſible to acquire that facility and dexterity in framing and arranging queſtions, which is neceſſary

to

to enable a man to conduct an examination with effect.

Begin with leading your witneſs to the point from whence he is to ſet out; take care to keep him in his road; ſee that he drops nothing by the way: if he has left a chaſm in his evidence, remember to put proper queſtions to fill it up; if parts of his evidence ſhould require explanation, put him upon giving the proper explanation.

Croſs-examining, conſiſts in ſifting, and trying teſtimony given by the adverſe party. This is a delicate operation, and requires very quick apprehenſion, and great ſagacity and addreſs. The advocate muſt ſee, in an inſtant, the whole effect of the teſtimony he is about to ſift, it's bearings upon every part of the caſe, his own caſe as well as that of his adverſary, it's ſtrong as well as it's weak places; he ſhould know the mechaniſm of the human mind, be able to trace the paſſions through all their workings, to diſcern the character of a witneſs, read his thoughts in his countenance, and anticipate them. An able and judicious advocate, who has laid

laid his foundation well, and is practiſed in his buſineſs, and ſufficiently inſtructed by his brief, will generally catch at this, as it were, intuitively; but, if he happens not to have ſo clear and comprehenſive a view of every thing as he could wiſh, he will carefully reconnoitre the ground, before he attempts any attack; he will obſerve two golden rules—

He will never aſk a queſtion, without having a good reaſon to aſſign for aſking it.

And,

He will never hazard a critical queſtion, without having good ground to believe that the anſwer will be in his favour.

When an advocate teaſes a fair witneſs unneceſſarily, he diſgraces himſelf, and endangers his cauſe; if you doubt his accuracy, try it by circumſtances, but treat him with reſpect: let your countenance mark, to him, neither ſurpriſe nor diſſatisfaction, nor any other emotion which may diſcover to him that you entertain doubts; indeed, it ought to be laid down, as a third golden rule—

That

That the advocate, who has the conduct of vivâ voce examination, muſt be maſter of himſelf, and acquire a perfect command of his countenance, on the moſt trying occaſions.

It is abſolutely neceſſary, that the young barriſter ſhould thoroughly underſtand the law of evidence, in theory; and that, by attendance on trials at niſi prius, and in the crown courts, he fixes in his mind the coincidence of the theory with the practice *.

* Gilbert's law of evidence is the beſt book upon this ſubject; and the chapter in Quinctilian *de teſtibus*, will give ſome excellent hints on this ſubject.

ANALYSIS OF PRACTICE.

A Knowledge of *practice* is a very neceſſary knowledge, but can only be acquired *by practice*; though, as it's rules depend on principles, it is as much a ſcience as any other part of the law.

The inveſtigation of *theſe rules*, is attended with conſiderable difficulty; the very few books, of any credit, that have been written on this ſubject, are written on a looſe, unconnected plan, and, after all, ſpeak only to the profeſſion: this branch of the law is, more than any other, deſtitute of any elementary treatiſe; whoever affects acquaintance with it, is left both to teach and perfect himſelf in it, by experience, and muſt not expect, from any thing hitherto communicated on this ſubject, to form any idea of it—without a conſiderable attendance on the courts, and making his own concluſions from a vaſt

number of particulars—for the very few books about it, are a mere common-place, diſtributed under ſome general titles, of uſe to the profeſſion, but without any tendency to convey a knowledge of practice to the ſtudent—the following ſhort analyſis of practice is, therefore, here ſubjoined.

A perſon, who has a cauſe of action, either in a right detained *from*, or an injury done *to* him, is determined to bring his action—he takes out proceſs againſt the party complained of, ſtiled defendant by his attorney—in conſequence of which, defendant either puts in common or ſpecial bail, as the caſe requires—Defendant being thus in court, the plaintiff declares, in proper form, according to the nature of his caſe—defendant anſwers this declaration—and the charge and defence, by due courſe of pleading, are brought to one or more ſimple facts; theſe facts, ariſing out of the pleadings, and from thence called *iſſues*, come next to be tried by a jury—The jury, having heard the evidence upon the iſſue before them,

them, find a verdict for the plaintiff, or the defendant—on that verdict, a judgment is *afterwards* entered—The coſts of ſuit of him who ſucceeds, are then taxed by the proper officer of the court—judgment is ſigned—and execution perfected by levying on the opponent's effects the damages *given* by the jury—where plaintiff recovers—and the coſts *allowed* by the court—which being done, there is an end of the ſuit.

The practice of a court, and of the judges, &c. in chambers, in civil ſuits, ariſes entirely from the *interruption* in the *regular ſtages* of a cauſe.

Thoſe *regular ſtages*, as to the time and manner of carrying them on, are themſelves the legitimate offspring of the eſtabliſhed practice of the court where the cauſe is brought—when they are purſued, the courſe of proceedings runs on ſmooth, being tranſacted by the attornies in the cauſe, and the officers of the court, without ever being heard of in court, till trial. The

irregularities that puſh a cauſe out of it's courſe, muſt be redreſſed by interpoſition of the court, and is the buſineſs which furniſhes great part of the viſible practice of the court in term time, and of the judges at chambers all the year round.

It is neceſſary to premiſe, that—the application to the court, by counſel, is called a *motion*; and the order made by a court on a motion, when drawn into form by the officer, a *rule*.

The attorney firſt takes out proceſs againſt the defendant, in order to make him appear, and put in bail—The proceſs taken out may be *irregular*, and then it will produce a motion *to ſet it aſide*; as, for inſtance, where the defendant is a privileged perſon—it may not only be *irregular*, but highly *oppreſſive*, and then it grounds—a motion *for an attachment againſt the parties executing the proceſs, as for a conſtructive contempt of the court*—this is a general motion, and may, as the oppreſſion itſelf may, ariſe in any

any ſtage of the cauſe—The *ſuit* itſelf, as well as the *proceſs*, may be irregular; and then it will occaſion a motion *to ſtay proceedings in the cauſe*—as, where the parties have agreed to compromiſe the matters in difference, and a releaſe is not executed; for the releaſe, when executed, may be pleaded in bar of the action—The *firſt proceſs* may be regular, but *the requiſition of bail* may not: and then we hear of various motions—

1. *To diſcharge the defendant, on filing common bail*; where it appears, from the affidavit, that he is not liable to give *ſpecial bail*, or where the affidavit to hold to bail is defective.

2. *To ſet aſide a judge's order*, made at his chambers, relating to the bail.

This kind of motion may be made, alſo, on other grounds—if the bail is regular in the manner of putting it in, but ſuſpicious as to the circumſtances of the bail;

bail; the plaintiff gives notice, and the defendant moves—*to juſtify bail in open court.*

Having done with the *bail*, we come to the *declaration*—and this will furniſh ſeveral motions. The *declaration* being delivered, the defendant may apprehend it to be immoderately *prolix*; in which caſe, he moves *to ſtrike out ſome counts in the declaration*—the court, uſually, upon this, orders it *to be referred to the maſter of the plea office*, and the *maſter's report* is the ground of the rule afterwards made. *A motion for the maſter's report*, is another motion that may ariſe in various parts of a cauſe.

In an action that is in it's nature *tranſitory*, if the declaration lays the cauſe of action in *one* county, and it did in reality ariſe in *another*, the defendant may avail himſelf of that circumſtance, and upon affidavit—*apply to the court for the plaintiff to change the venue*—that is, the place where the cauſe

of

of action is declared to have happened—from the firſt county to the latter. The *venue* may likewiſe be changed from any county in England, in tranſitory caſes, wherever the cauſe of action aroſe, to that of Middleſex where the court ſits, if the defendant is privileged, as an attendant on that court; or, where the *jury*, and not the *venue*, is to be changed—as, when the material evidence ariſes in the place laid, but no jury, common or ſpecial, can be had, that is not intereſted—as, where it is a county cauſe, about a bridge, or the like—it is uſual to move *for a trial in the adjoining county, upon entering a ſuggeſtion on the roll.*

"*A ſuggeſtion on the roll,*" is ſometimes entered for other purpoſes; as, where one of ſeveral plaintiffs or defendants dies, or where the ſheriff, who regularly returns the proceſs, is partial, and this, too, in the return of the freeholders book, for a ſpecial jury to be ſtruck by the officer of the court—in that caſe, the *coroner* muſt return the liſt; and, even where this precaution is neglected,

a challenge

a challenge may be taken to the array of a ſpecial jury at the trial.

If a declaration is ſubſtantially or formally defective, the defendant, *inſtead of anſwering, demurs to it*—The *exception* he takes, is thereupon ſolemnly argued in court; and the court determines the cauſe upon it, *unleſs the party in error moves to amend*—If, on the other hand, the declaration is delivered, and is unexceptionable, and the defendant neglects to anſwer it in due time, *the plaintiff has his judgment by default*—But if the plaintiff is over haſty in ſigning this judgment, the court will interpoſe—on a motion *to ſet aſide the judgment*; in conſequence of which, the defendant will be again at liberty to plead. The motion *to ſet aſide the judgment*, obtains alſo in this inſtance—

When the defendant comes to plead to the declaration, inſtead of making, in due time, a plain denial of the charge—called, *the general iſſue*—he may find it neceſſary to *vary* the

the common courſe, either by enlarging the *time*, or the *manner* of pleading: in which caſes, he will move—*for time to plead*; which being a matter of indulgence, the court, upon the equity of the caſe, may refuſe, or grant—and grant without, or up on, terms.

At common law, a defendant could only plead one ſingle matter, which rigour often abridged the juſtice of his defence, and was, doubtleſs, one cauſe of perplexed, artificial pleading; the party endeavouring to croud as much reaſon as he could into his plea, however intricate, repugnant, and contradictory, he made it by ſo doing: the legiſlature has remedied this defect; and, if the defendant thinks more than one plea neceſſary, he moves the court *to plead ſeveral matters*, which he mentions. Sometimes, this expedient is an after-thought; and then, as it tends to delay the plaintiff, by putting him out of the beaten track, the defendant moves—*to withdraw the general iſſue, and be at liberty to plead ſpecially*. Sometimes, he moves the contrary.

The *plea, replication, rejoinder, &c.* if they eſcape a *demurrer*, are, at length, entered on record, and form an *iſſue*—which remains to be ſent to a jury; in order to which, *a record*, or copy of the iſſue, is tranſcribed for the judge who tries the cauſe, and this is called the *niſi prius record*. The *verdict* of the jury is indorſed on this *niſi prius record*, and has the name of the *poſtea*, from the word "*afterwards*," with which it begins.

Between the *iſſue* and the *trial*, ſeveral motions may happen, which may either put off the trial, or not. Of the latter kind, and at this ſtage, is a motion by the defendant—*for leave to pay money into court*; which is an admiſſion of ſo much being due, and nonſuits, or gains a verdict againſt, the plaintiff—if he goes on, and does not prove, at the trial, *that more is due than the defendant has ſo paid into court*. The ſame kind of application has been extended to *goods*, of various kinds, in diſpute; but, as to theſe, the court has been rather unwilling

to

to grant the requeſt, obſerving, that effects are generally cumbrous, or periſhable; beſides, no recovery, in a perſonal action—except in that of *detinue*—is *ſpecific* as to the thing itſelf; and, conſequently, as the thing, when ſo returned, may be in a worſe condition than when it was taken, the plaintiff would be worſe off, by having it brought into court, than if he had damages eſtimated according to the value of it at the time it was taken.

Many circumſtances may make it neceſſary to poſtpone a trial, or vary the common forms of examination. The neceſſary witneſſes in the cauſe may reſide altogether abroad—or, being there for a time, may not be likely to return at the time of the trial—in the firſt caſe, the court is moved for *a commiſſion to examine witneſſes on interrogatories*—which interrogatories are ſettled here, and ſent over; and, with their anſwers, properly atteſted, are returned, and read in evidence at the trial. In the latter caſe, the trial is delayed, on motion *to put it off for*

the abſence of a material witneſs. In caſes where a witneſs is ſo infirm, or old, that he is not likely to ſurvive the arrival of the witneſs expected by the other party; or, in caſe his neceſſary buſineſs—as, a trading voyage abroad—obliges him to leave England before the trial can come on—a motion is made, *to examine ſuch witneſſes de bené eſſe:* the conſequence of which is, to admit the depoſitions ſo taken as evidence, if the perſon cannot afterwards be examined *vivâ voce* at the trial. If a witneſs is under none of theſe incapacities—but, being duly ſummoned, neglects to attend—the law, in that caſe, gives ſeveral remedies againſt the witneſs: either to bring *an action upon the ſtatute,* to recover the penalty expreſſed in his ſummons; or, the law, in vindication of the contempt which itſelf has ſuffered by his neglect, will puniſh him criminally, on *a motion for an attachment.*

Hitherto, only *parole* evidence has been conſidered as having an influence on the delay of a trial; the ſame muſt, in many caſes,

caſes, follow from *written teſtimony*: thus, for inſtance, among many other particulars, we often hear of motions *for leave to inſpect and take copies of corporation books*; or, of motions *for an order to produce them at the trial.*

Not only the *witneſſes* in a cauſe, but the *jury*, occaſion particular applications to the court; ſo does *the nature of the cauſe in queſtion*; and ſo does *the courſe of judicature itſelf.* The *nature of the cauſe* will ſometimes require the jury to *ſee* the very ſpot where the matter in diſpute ariſes; in which caſe, after iſſue joined, the court is moved *for a view.* The cauſe is, at other times, of ſuch a nature, as probably to exceed the apprehenſion, or inflame the paſſions, of a common jury; or it may affect too large a property to be left to their deciſion: in either caſe, *a ſpecial jury will be moved for.* Sometimes the cauſe is, apparently, likely to be very intricate—and to involve a point, or points, of abſtruſe law—this produces a motion *for a trial at bar*; that is,

is, before all the judges of the court—which being allowed, the points are determined, as they ariſe, by all the judges of the court.

After having thus gone a little out of the way, to put a caſe leſs common, let us once more return to the common caſe, and imagine the cauſe brought to the aſſizes—the jury ſworn—and the witneſſes examined; or, the jury may be ſworn, and the witneſſes may be in part examined, and yet the trial may ſtop—becauſe the parties may then, or at any time, compromiſe the matter in difference, or refer it. In either caſe, a rule is made at the aſſizes, called *an order of niſi prius*, and a motion is afterwards made *to make the order of niſi prius a rule of court*. This is always done upon conſent of both ſides, and is the beſt ſecurity for performing an agreement or an award, becauſe it engages the ableſt ſecond in the world to fight with your antagoniſt, by making the injury done to you a contempt of the court.

But, ſuppoſe the parties are averſe to a reference; the cauſe, then, it is plain, muſt

go

go on—it may go on, and yet not get to a verdict; becauſe, if the plaintiff does not prove his caſe, the defendant calls no evidence, and inſtead of a verdict on either ſide, there is a *nonſuit*. Wherever a verdict is given, the plaintiff muſt at leaſt give evidence to maintain his declaration: where evidence is produced on both ſides, the verdict is given for the plaintiff, or defendant, according to the ſuperior weight of evidence.

If the trial prove deciſive, by neither the law nor the fact being afterwards controverted, the *niſi prius* record, and verdict, are delivered by the proper officer to the attorney of the victorious party, to ſign his judgment. But, in many caſes, after a verdict given, there is room to queſtion it's validity; on which account, a motion may be made, *to ſet it aſide*—as it may on other grounds—either from a jury's manifeſt imputation on the judgment—on it's being clearly contrary to evidence—or, in caſe the damages given greatly exceed the injury ſuſtained—in all which reſpects, *a*

new

new trial may be moved for. Even if the verdict itſelf ſtands unimpeached, ſome original defect may appear on the face of the record, which ſhews that no verdict ought to have been given; or, though given, no judgment can be had on it: and, when this happens, the motion is *in arreſt of judgment*, or a *writ of error* may be brought.

Suppoſing the *verdict* and *record* to ſtand clear of all objections, the *judgment* follows of courſe; and, after judgment, *execution.* The purpoſe of which execution is, to ſeize the *damages* aſſeſſed by the *jury*, and the *coſts* allowed by the *court.* The *execution*, however, may, for a ſhort time be interrupted, on the grounds, that one of the party is dead, in which caſe—a *ſcire facias to revive the judgment, muſt be had againſt his repreſentative*; or, where the party is ſtill living, inſtead of an execution had on the judgment, *an action of debt may be brought on it*—but *that* action is unfavourable in the eye of the law, becauſe it is commonly the offſpring of *oppreſſion*;

oppreſſion; or it may, for inſtance, be brought, when an execution againſt the *goods* is preferred to that againſt the *perſon*, and it comes out, from the return of the ſheriff, that *no goods are to be found*.

If the ſheriff, in this reſpect, returns a falſity in fact, or in point of law by an illegal preference of one demand to another, he is liable to an action for ſuch falſe return.

When *execution* is ſatisfied, that ſatisfaction may be entered on the record.

But a cauſe may, on many occaſions, come much ſooner to an end, and in a direction very different from what has been mentioned; it may come ſooner to an end than by a trial, or it may come to an execution without a trial: for, if a defendant neglects to plead, *judgment will go againſt him by default*.

Where a plaintiff ſeeks for damages only, the judgment is only *interlocutory*, and the damages are afterwards aſcertained by a

jury on a *writ of enquiry* before the ſheriff; and, the damages being found, a final judgment for ſuch damages and coſts is entered up. In this courſe of proceedings, other motions may ariſe, as—*to ſet aſide the plaintiff's judgment, and writ of enquiry iſſued thereon, as irregular—to execute a writ of enquiry before a judge*—inſtead of the ſheriff—where it is a matter of importance; and, ſometimes, *for a new writ of enquiry for exceſſive damages*, in the ſame manner as for a new trial on the above grounds.

There are two caſes—even where a plaintiff ſeeks damages—in which the admiſſion of the defendant ſilences all future enquiry, either as to the truth of the fact, or the quantity of the damages; conſequently, ſupercedes both trial and enquiry: that of a direct confeſſion of the action—and warrant of attorney to confeſs a judgment. This latter occaſions a motion very often; for, where it is above a year's ſtanding, a motion muſt be made *for leave to file the warrant of attorney*,

attorney, on affidavit of the defendant's being ſtill alive, and the debt unpaid.

When it was ſaid, a matter might come ſooner to a trial—alluſion was made, to what is called *an iſſue directed by the court*; which obtains, in a court of law, principally, where a queſtion of *civil* right is involved in a *criminal* proſecution for a miſdemeanour—in which caſe, it is the uſual lenity of the court, to ſuſpend the latter till the former has been tried—or, where a court of equity directs facts to be enquired of at law, and does not reſt the caſe on depoſitions—and this manner of trying the fact, *by directing an iſſue*, has great advantages over a regular form of action: *firſt*, in being better adapted to the real merits of the caſe; *ſecondly*, in avoiding the delay and intricacy of pleading.

This mode of trial, is called *a trial by feigned iſſue*, and bears the form of a wager.

The *general motions* have been progreſſively pointed out in their natural order; though, in the courſe of practice, they muſt

be made promiſcuouſly: and though, in this view, they appear but few and ſimple, they are capable of being infinitely diverſified, as the circumſtances, or their objects, are diverſified.

There are ſome few motions which ariſe in the firſt inſtance of a ſuit; as, *a motion for a prohibition*; SUCH, too, are many applications to the court *for ſummary relief on an act of parliament*; as, *relating to articles of clerkſhip to attornies—inſolvent debtors—and others of that ſtamp.*

All motions, are grounded on affidavit.

The *crown buſineſs*—which was originally the only branch of the juriſdiction of the court of king's bench, and of which it ſtill retains excluſive juriſdiction—muſt be treated of in a different method from that adopted in deſcribing the courſe of practice in cauſes between man and man.

There, the great outlines of practice were deduced from a minute analyſis of a civil action:

action: the practice of *courts of equity* may be deduced in the ſame manner, by attending to the ſeveral ſtages from the filing the bill, to the execution of the decree. The conformity is ſo obvious, that it is unneceſſary farther to unfold this idea, by recurring to particulars.

The practice on the *crown ſide*, will not admit of the application of this idea—much the greateſt part of it, is independent of any ſolemn trial; and trials themſelves are too ſimple to endure much interruption, or branch out into many points of practice. Perhaps it cannot be explained better, than by dividing the crown practice into ſuch matters as originally commence in this court, and ſuch as are removed into it from other inferior juriſdictions; of both which kinds, taken together—for there is no need to diſtinguiſh them minutely at preſent—are, *motions for a habeas corpus—for mandamuſes—reſpecting articles of the peace—motions relating to the diſcharge of recognizances*—and, *to remove indictments—orders of ſeſſions, and convictions made by juſtices, from their*

their common ordinary courſe of proceeding, by writ of certiorari, &c. on ſome foundation of complaint againſt them.

The viſible practice that occaſions this removal, and that ariſes from it, may be reſolved into theſe few motions, very ſimple in their kind, though *infinitely diverſified* as to their objects.

1. The general motions—*to remove the indictment, the order, or conviction, by certiorari*; 2. *Motions to quaſh the indictment, order, or conviction, when it is removed*—and, in the caſe of an indictment removed, or a demurrer, it is ſet down to be argued; or, a motion may be made *in arreſt of judgment, on motion for judgment after the trial.*

The *motion for a ſpecial jury*, as well as ſome other motions already mentioned, may accidentally be made in the caſe of an indictment, as it is in a civil ſuit.

2. But the moſt extenſive juriſdiction is involved in matters of original cognizance, whether

whether it regards indictments or informations, on ſuch matters as are entirely independent of either.

There is little or no difference between an indictment commenced in this court, or one removed from another court, as to the motions concerning them. As to *informations*, though altogether creatures of the court, they admit but of theſe motions—*the application to the court to grant it—when granted, and tried*, a caſual motion, *in arreſt of judgment, on grounds ariſing from the record itſelf—or, where the charge in the information, and the verdict, are both inconteſtable, the motion for judgment, and* &c.

LEGAL FICTIONS, AND PLEADING.

THE trick, *fiction*, and uncertainty, of *ſpecial pleading*, and the tedioufneſs and verboſity of *conveyancing*, having been topics of public diſcuſſion, it may not be improper, here, to add the following obſervations upon ſuch charges.

In morality, as well as law, intereſt will often get the better of reaſon, and men—ſays the ingenious author of the barriſter, from whom this is principally taken—who have a paſſion to indulge, or a right to diſpute, will, when biaſſed by intereſt, endeavour to meaſure the ground againſt truth, and keep up a colour of argument, though they argue from falſe principles: but then, in either inſtance, ſophiſtry ſhould not be complimented with the name of demonſtration; neither ought morality, or law, to be degraded, becauſe they are abuſed.

Lawyers may be excuſed, in arguing from *fictions*, if, by ſo doing, they do no more than mathematicians. Thoſe, converſant in the higher geometry, know what uſe is made of mere approximations, where the concluſions, though *ex vi termini* not ſtrictly true, are ſo near the truth, that they anſwer the ſame purpoſe. But, to give an inſtance, in natural philoſophy, within every body's reach, do but—(in Prior's language)—

——— "Caſt your eye,
At night, upon a winter's ſky,"—

and then tell me, whether you ſee any of thoſe bears, dogs, and ſerpents, ſo familiar to aſtronomers. Every body ſees the groſſneſs of the fiction, and yet it is uſeful to aſtronomers. After theſe bold aſſumptions, ſhall the lawyer be deprived of a few innocent fictions? But the law itſelf, in reality, is not anſwerable for *all* it's fictions. We muſt diſtinguiſh: ſome, indeed, are of it's own creation, but others are the effect of time alone. To explain myſelf——*That all lands are held of the king—that the term is but one day—that Jamaica*,

Jamaica, or any other part of the world, is ſaid, in a declaration, to be in the county of Middleſex, are mere notions of law, and of the genuine eſſence of fiction; but the terms, *benefit of clergy—incurring præmunires—the doctrine of common recoveries*—and *caſual ejectors*—though fictions now, were once correct expreſſions, and founded on former real practice, but by courſe of time and accidents are greatly perverted from their original, yet eaſily to be traced to a ſound natural meaning. This ſcience is leſs troubleſome than it was formerly, becauſe time has not only lopped off one of it's largeſt branches, in the diſuſe of real actions, but improvements in the law itſelf have weeded it of many of thoſe quirks and chicaneries that formerly diſgraced it; witneſs, the ſtatute of queen Anne, for the amendment of the law, and a hundred others, allowing the *general iſſue* to be pleaded, and the ſpecial matter given in evidence.

By *pleading*, we underſtand the entire ſtructure of a record; comprehending, as well the plaintiff's demand, ſuited to the nature

of the action, and the circumſtances of his caſe, as the proper anſwer of the defendant, to deſtroy that demand, with the ſubſequent ſteps ariſing from them, till the record is brought to ſome iſſue, either of law or fact.

Now, with reaſon and common ſenſe for our guide, would not every one, in framing any demand at law, conſider what is to be alledged, and what can be proved? In ſuing either for a right detained, or a wrong committed, the plaintiff is to recover by his own ſtrength, and not by the defendant's weakneſs: and if, in point of prudence, as well as juſtice, he ought to demand no more than he can prove; he ought to demand it with *that certainty and preciſion, as to time, place perſon, &c.* that the defendant may know how to *anſwer* the demand, and a third perſon, an entire ſtranger to both, ſitting in a court of juſtice, may know how to *judge* between them. *This*, certainly, is the eſſence of a *declaration* in the abſtract: it is common to every form; and, without it, no form

of

of a declaration is perfect—and, though the wiſdom of the law has invented different forms of actions for the recovery of different rights, we ſhall find, that the ſubſtantial part of any declaration is, *as to it's great outlines*, what any perſon of good ſenſe would moſt probably put together, on a demand of this nature.

Forms, of ſome ſort, are the conſequence of any thing becoming an art. Theſe forms are more conciſe and convenient in themſelves, than any one general form can be.

The defendant's *plea*, or anſwer to the declaration, is the moſt difficult part. It muſt be grounded, as well on the caſe the plaintiff makes, as his own; and, therefore, in the ſimpleſt view, a defendant muſt either *except* to the manner in which the plaintiff makes his demand, or he muſt *anſwer* it. Again—in anſwering, he muſt *deny* the fact alledged againſt him, or *juſtify* the doing it. This ſcience, like every other, has it's axioms; certain eſtabliſhed maxims, which influence the whole, and with which all parts of the ſyſtem muſt be conſiſtent.

A *declaration*,

A *declaration*, in general, will be good, if the demand itſelf is well grounded, the form of action rightly choſen, and the circumſtances of the caſe expreſſed with ſufficient certainty and clearneſs.

A *plea*, in general, will be good, if it is a legal anſwer to the declaration.

To be more particular, the firſt fault in pleading is fatal, and the declaration is the ground of the whole.

To have the demand unexceptionable, there muſt be a legal right of action, and the proper courſe of remedy. The caſe muſt be expreſſed with perſpicuity and preciſion; and hence the neceſſity of many counts, or different ways of laying the caſe, in the declaration: hence, too, matters of inducement are laid. It is a general rule, that theſe are not traverſable; becauſe they are not material to maintain the charge, but to inform the court how the demand aroſe. For this reaſon, they need not be averred; but every thing material to be anſwered, ought to be averred.

Then,

Then, as to the plea, it muſt be either a direct denial, or a direct excuſe. Conſidered as a denial, it muſt not ſet out matters which do, in effect, amount to the general iſſue, but muſt ſet out the general iſſue itſelf; for, as every one ſees, the latter brings the record to the very point at once, which after all, in the other caſe, it may come to, though poſſibly not till it has been ſwelled and entangled with replications, rejoinders, and ſurrejoinders.

A plea muſt not contain matter of argument, or inference, but a poſitive aſſertion; it muſt not contain departures, or traverſe what is not alledged in the declaration; it muſt not be double, but reſt on one ſingle point of defence. A defendant, at this day, by leave of the court where the cauſe is depending, may plead *ſeveral matters* in his defence, but not make a plea double. The antient way, ſtill uſed in many caſes to avoid duplicity in a plea, is firſt to *proteſt* matters charged are not true—and if true, by way of plea, to *juſtify*.

This

This form of pleading admits of but one diſtinct iſſue, either upon *a proteſtation or the plea:* it muſt be right in it's concluſion; that is, in proceeding *by original writ*, it muſt, as the caſe requires, conclude either to the writ, or the declaration; and in this ſenſe, is that maxim to be underſtood—*the concluſion defines the nature of the plea*—and, in every caſe, a plea muſt conclude, either to the court, or the country, as the matter contained in it is properly cognizable by the court, or a jury, and therefore leads towards a *demurrer*, or an *iſſue of fact*.

The ſtructure of a record, raiſed on theſe foundations, is not leſs ſolid than the demonſtration of a propoſition in Euclid; and pleading, formed on theſe maxims, is not only matter of *ſcience*, but perhaps affords ſome of the beſt ſpecimens of ſtrict genuine logic.

The legiſlature has authoriſed the *general iſſue* to be pleaded in many caſes, and permitted *the ſpecial matter* to be given in evidence; and an application was made, at the time our great reformation in the law

was

was effected, by putting pleadings into Engliſh, to aboliſh, at one ſtroke, all ſpecial pleadings whatever. *That part of the petition was barely left to ſtand on the journals, and never was made part of the law.*

Others have wiſhed to compaſs the ſame end, but by different means: as, to have the advantage of the *general iſſue in all caſes*, and *in all caſes* to have a note of the true point meant to be inſiſted on at the trial, given to the other party or his attorney—to have that very point found in terms by the jury—and to have it endorſed on the poſtea, and judgment given on the point.

This method, it has been thought, would be ſufficient to prevent ſurpriſe on either ſide; and would, at the ſame time, remedy all the inconveniences complained of, and yet make the record particular enough to ſet up one verdict unimpeached as a bar to another trial on the ſame caſe.

As to the *tedioufneſs*, *obſcurity*, and *prolixity*, of *conveyancing*—the obſcurity which is imputed to conveyancing, as one defect, is in reality the cauſe of the *prolixity* of

other deeds—that they may not be obſcure. Their *verboſity* ariſes from the anxiety of the parties, that their meaning may be fully expreſſed; that as little as poſſible may be left to refined conſtruction, and no loop-hole for evaſion.

The property of the whole kingdom was formerly comparatively ſmall in itſelf, and in very few hands, and trade hardly exiſted—from the time of Henry the VIIth, alienation of property became more free; property having ſubſiſted in ſo many new modes, and it's being ſo widely diffuſed, are circumſtances that directly lead us to the conſideration of conveyancing; the forms uſed in early times were few and ſimple, for which it will be ſufficient to have recourſe to *Weſt*, *Madox*, and ſome other compilers of antient precedents.

The alteration in forms of conveyancing, have depended much on the various alterations in the modes of conveyancing which have been *lately* introduced; ſuch as thoſe *by bargain and ſale enrolled—covenants to ſtand ſeiſed to uſes—aſſignments under the bankrupt*

bankrupt laws—or, *by-laws* requiring new circumſtances, affecting forms that had a prior exiſtence; ſuch as, the atteſtation of wills, and the influence of ſtamp acts upon conveyances in general.

The complicated conveyances of chief note—and which may occaſionally comprehend (by recital) all others—are, *a marriage ſettlement—and a will.* Neither of theſe are common-law conveyances, and but of late years have reached to that ſize we now ſee them.

The *confuſion* and *uncertainty* in conveyancing, does not ariſe ſo much from length, as from other circumſtances: firſt, from the uſe of ill-defined words, and the affectation of unuſual clauſes; ſecondly, conveyances and wills have often ſplit upon another rock, where no ignorance of the law could have been imputed to the makers of them—but, on the contrary, *too much ingenuity*—for inſtance, where they have attempted what the law will not allow, as in the caſe of perpetuities, &c.

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